

FREEDOM OF BELIEF AT THE CROSSROAD OF CIVILISATIONS, AN ISLAMIC  
PERSPECTIVE, AND ITS IMPACT ON AFRICA: THE CASES OF EGYPT AND NIGERIA

submitted in partial fulfilment of the requirements of the degree Master of Law (LLM) in  
Human Rights and Democratisation in Africa, Faculty of Law, Centre for Human Rights.

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27 October 2006

## Statements

'...a fringe movement that perverts the peaceful teachings of Islam. The terrorists' directive commands them to kill Christians and Jews, to kill all Americans, and make no distinction among military and civilians, including women and children.'

George W. Bush

*President of United States of America, in his Address to the joint Session of Congress, and the American people about the 11 September 2001 terrorist attacks on World Trade Center 20 September 2001* <<http://www.whitehouse.gov> (accessed on 15 July 2006)

'When God blessed one of the groups of Islam, vanguards of Islam, they destroyed America. I pray to God to elevate their status and bless them.'

Osama Bin Laden

*Leader of the terrorist organisation, Al Qaeda, speaking after 11 September terrorist attacks on World Trade Center in New York, as reported by USATODAY.com on Sunday 20 September 2001* <<http://www.ustoday.com> (accessed 15 July 2001)

## Declarations

I, Ibrahima Sidibe, acknowledging the use of the works of other scholars, to which references have duly been made, declare that this paper is my personal work, and that it has never been submitted to any university or institution, as such, it is original. I assume the correctness of the information therein provided and all the shortcomings are entirely attributable to me.

Signed.....in Cairo

Date: 26 October 2006

I, Alejandro Lorite Escorihuela, being the supervisor, have read this work and approved it for partial fulfilment of the requirement of Master of Law Degree (LLM), Human Rights and Democratisation in Africa, Centre for Human Rights, Faculty of Law, University of Pretoria.

Signed.....in Cairo

Date: 26 October 2006

Alejandro Lorite Escorihuela  
(Supervisor)

### **Acknowledgement.**

The completion of this work would not be possible without the support, both morally and materially, of many persons and institutions. This is the opportunity to thank them:

I am first of all grateful to the Centre for Human Rights for giving me, and many others like me, the opportunity to take part in this prestigious programme; for making me part of these alumni who constitute today the springboard of the human rights defence on the African continent. I am also grateful to the generous donors of the Centre for Human Rights, for helping to uphold human rights in Africa.

I will wholeheartedly give thanks and appreciation to the following persons, whose personal assistance made this dream a reality for me. They are Mr Morman Taku, Martin Nsibirwa, Jeremie Munyabarambe, John Wilson, Magnus Killader, Mianko Ramaronson, Hye Young Lim, Waruguru, Professor Frans Viljoen, Professor Hansugule and the Director of the Centre for Human Rights, Professor Christof Heynes.

My sincere thanks go to Alejandro Lorite Escorihuela of the American University in Cairo, Alia Diaby and Diop Mamadou Souare of the Lansana Conte University of Conakry, and my friends Okelo and Ambani, and all the other classmates, who created an adequate working atmosphere for me during this programme.

Finally, I thank my late father Kaba Sidibe for opening my eyes, my mother Meckon Camara, for helping me trough and God the Almighty for giving me the use of my right hand.

**Dedication**

This work is dedicated to my beloved daughter, Aminata Sagesse Sidibe.  
(Du courage, ma fille !)

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## Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ADRDM	American Declaration of the Rights and Duties of Man
A.H	After Hejra
AHRLR	African Human Rights Law Reports
AJDA	Actualité juridique, droit Administratif
ASEAN	Association of South East Asian Nations
CAIR	Council of American Islamic Relations
CE	Conseil d'Etat
ECHR	European Convention on Human Rights
RGDIP	Revue Générale du Droit International Public
UN	United Nations
UNGA	United Nations General Assembly
RFDA	Revue française de droit administratif
HRC	Human Right Committee
ICCPR	International Covenant on Civil and Political Right
CCPR	Committee on Civil and Political Rights
ICESR	International Covenant on Economic, Social and Cultural Rights
IJG	International Justice Group
OAS	Organisation of the American States
R.C.C	Revolutionary Command Council
SAARC	South Asian Association for Regional Cooperation
SC	Security Council
UDHR	Universal Declaration on Human Rights
UIDHR	Universal Islamic Declaration of Human Rights
UK	United Kingdom
UN	United Nations
USA	United States of America
v	verse
vv	verses
v.	Versus

## Definition of Arabic terminologies

Abbasid	The dynasty of caliphs who ruled the caliphate of Islam 750 until 1258. They were all descendants of Abbas, a member of <i>Quraysh</i> tribe of Mecca, and an uncle of the Prophet Muhammad
Al balil	Falsehood
Al fahisha	Abomination
Al kafirun	Unbelievers
Al khlaq	Commands of God relating to ethics
Al Qaeda	The base
Al Takfir wa al Hegira	Denunciation, repentance of infidel and migration
Al watani	My country
Daawa	The Call
Da'awan	Cooperation
Dhul Quaida	The second month after the Ramadan in the Muhammadan calendar
Figih	Religious jurisprudence
Gamaat al Adila al Alamin	The International Justice Group
Haddiths	Books written by the companions of the Prophet Muhammad
Hedaya	Commentary of the Muhammadan common law
Hegira	Migration of the Prophet Muhammad from Mecca to Medina
Hudud	Limit set to the human behaviour by God
Ijma	The consensus of the Muslim <i>Ummah</i>
Ijthad	Creative interpretation of the <i>Qur'an</i>
Irtada	Turn one's back from Islam
Islam	Religion founded by the Prophet Muhammad in 7th century
Jahil	Infidel
Jihad	Struggle or holy war
Jizyah	Tribute
Jund Allah	Soldiers of Allah
Kaaba	The central shrine of Islam which is Mecca
Kifaya	Commentary of Hedaya
Mecca	City in western Saudi Arabia, and the birthplace

	of the Prophet Muhammad
Medina	City in western Saudi Arabia to which the Prophet Muhammad emigrated from Mecca in 622
Mukfirtiya	Denouncers of infidels
Muhammadan	Related to Muhammad the founder of Islam
Munnazamat al Jihad	The Organisation of Jihad
Muslim	The follower of Islam
Nuh	Noah
Qur'an	The Holy book of Islam
Qureish	The tribe of the Prophet Muhammad
Qyas	Analogy by reasoning of Islamic judges
Shar' a	Muslim law
Sunnah	The tradition or practice of the Prophet Muhammad
Sura	Chapter of the Qur'an
Takhahil lil ummah	Forsake the Islamic community
Ulama	Religious legal scholars in Islam
Ummah	The Muslim community
Ummayyad	The first Arab Muslim dynasty of caliphs (religious leaders) founded by Muawiyah in 661 and lasting until 750

## Chapter 1 Introduction

### 1.1 Research Questions

Is there an insurmountable conflict between freedom of belief and Islam?

Or, is Islam subject of misconceptions and misinterpretations in respect of those rights?

### 1.2 Background to the study

According to Nowak, freedom of thought, religion and belief certainly have a common conviction originating 'from the rationalism of the Enlightenment that the individual spiritual existence requires special protection by the State, that is his belief in spiritual ideas.'<sup>1</sup> This protection means also freedom to communicate his spiritual ideas to his kindred and other people of his community.

Therefore it cannot be separated from freedom of expression, which is usually termed the touchstone for all other rights provided by the international human rights instruments.<sup>2</sup> It is the symbol, more than any other rights, of the interdependence of the two categories of rights of the first generation (civil and political rights). It unites those rights into a harmonious entity.<sup>3</sup> It also involves two different conceptions of freedom, whose dialectical relationship formed what Nowak considers as the classic human rights concepts of Enlightenment: the interplay between collective freedom (freedom of participation), which stems from the classical antiquity, and individual freedom (autonomous freedom), which is modern.<sup>4</sup> It goes further to encompass political freedom of access to the State (Democracy) and liberal freedom from State as stipulate the Resolution of African Commission on freedom of Expression<sup>5</sup>:

*Noting that freedom of expression is a potent and indispensable instrument for the creation and maintenance of democratic society and the consolidation of development.*<sup>6</sup>

The necessity of guaranteeing these rights had been felt as essential parts of human aspirations, and formulated in concrete form to avoid the repetition of the ordeal unleashed on mankind by the two world wars. Franklin Delano Roosevelt, the former President of the United States of America, in his address to the 77th Congress of his country, on 6 January

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<sup>1</sup> M. Nowak *UN International Covenant on Civil and Political Rights* (1993) 313.

<sup>2</sup> n 1 above 336.

<sup>3</sup> As above.

<sup>4</sup> As above.

<sup>5</sup> The Resolution on Freedom of Expression was adopted at the 29th Session of the African Commission on Human and Peoples' Rights, in April 2001; after the Seminar on freedom of expression it held in Johannesburg, South Africa, from 22-25 November 2000. See C. Heynes (ed.) *Human Rights Law in Africa* (2004) 597 Volume 1.

<sup>6</sup> 3<sup>rd</sup> preambular paragraph.

1941, set forth the doctrine of four freedoms: Freedom of Worship (religion), Freedom of Speech and Expression, Freedom from Want and Freedom from Fear. In August of the same year, Roosevelt and Churchill, the former Prime Minister of Britain, signed the Atlantic Charter in the form of a joint Declaration which laid down a number of principles and policies to be put into effect when peace was achieved, so that the people of the world could live free from fear and want<sup>7</sup>. These principles included those that were incorporated four years later in the Charter of the United Nations, and reaffirmed in the preamble of Universal Declaration of Human Rights (Universal Declaration), which reads:

[a]nd the advent of a world in which human beings shall enjoy freedoms of speech and belief, and freedom from fear and want has been proclaimed as the highest aspiration of the common people.<sup>8</sup>

However, despite these universal characteristics given to freedom of belief many countries were cautious about certain provisions of the Universal Declaration. Some Muslim states abstained from voting it because of Article 18, which provides for freedom of thought, conscience and religion.<sup>9</sup> The main reason was that the article provides for freedom to change one's religion. Almost all the other subsequent human rights instruments covering freedom of belief have met resistance from some Muslim countries on the same ground.<sup>10</sup>

Another vision was given to Islam after 11 September 2001 terrorist attack on World Trade Center, in the sense that all the perpetrators of the attack, whose pictures were displayed on the television screens throughout the world, were Muslims (or had Muslim names).<sup>11</sup>

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<sup>7</sup> Organisation for Islamic Culture and Communication *Islamic Views on Human Rights* (2003) 374.

<sup>8</sup> The second preambular paragraph.

<sup>9</sup> M A Baderin *International Human Rights and Islamic Law* (2003) 119, and UN DocA/PV.182 (1948) 890.

<sup>10</sup> n 9 above 119.

<sup>11</sup> Dilip Hiro *War without end. The Rise of Islamist Terrorism and Global Response* (2003) 300-304: American Airlines Flight 11: Waleed al Shari (Saudi Arabia) Wail al-Shehri (Saudi Arabia) Mohamed Atta (Egypt) Abdel Aziz al Omari (Saudi Arabia) Satam al Suqami (Saudi Arabia);

United Airlines Flight 175: Marwan al Shehi (Emirat), Fayeze Bani Hamma (Emirat), Mohamed al-Shehri (Saudi Arabia), Hamza al-Ghamdi (Saudi Arabia), Ahmed al-Ghamdi (Saudi Arabia);

American Airlines Flight 77: Khalid al Mihdhar (Saudi Arabia), Majed Moqed (Saudi Arabia), Nawad al-Hazmi (Saudi Arabia), Hani Hanjour (Saudi Arabia)

United Airlines Flight 93: Ahmed al-Haznawi (Saudi Arabia), Ahmed al-Nami (Saudi Arabia), Ziad Jarrah (Lebanon), Saeed al-Ghamdi (Saudi Arabia).

In these civilisational and cultural frictions, Africa has become a battleground, human rights, mainly freedom of belief, is sacrificed, and Islam is once again alleged. It is the combination of those events that inspired my choice for this topic.

### **1.3 Objective of the Study**

This study focuses on the impediment that suffers freedom of belief, which goes beyond religious belief and its manifestation, as a result of clashes of civilisations, and their consequences mainly on the horizontal level, on the African continent. The central thesis of the work is that see whether “Islam” is a monolith or as if there exist different standards of the freedom of belief in Islamic context from that guaranteed in international human rights instruments.<sup>12</sup>

### **1.4 Literature review**

There is a lot of literatures covering freedom of belief in Islam, both from Muslim and non-Muslim scholars. However, these materials do not analyse what this study seeks to do. They seem not to be interested in distinguishing between principles set forth in the Islamic sources and the historical patterns of interpreting these principles. Similarly, they do not distinguish between moral values or ideal perspective norms of Islam and the actual laws and policies of Muslim countries.

In his two volumes<sup>13</sup>, M. H Syed addressed the issue of freedom of belief or religion. In his attempt to make a parallel between human rights in Islamic concept and international human rights principles, he gave two separate sets of human rights values; and emphasised on the superiority of Islamic human rights systems. In that move, he adopted a philosophic approach rather than a juristic one.

For Mashood A. Baderin<sup>14</sup>, he adopted the issues of freedom of belief, in pure legal terms, however, he does not analyse, the abuse and misinterpretation of the Islamic instruments by some Muslims, neither does he address the misconception of the non-Muslim world about Islam’s position vis-à-vis the same. He barely made a sort of comparison between Islamic views on freedom of belief and those international human rights principles, mainly ICCPR in order to identify the similarities between the two. Even though he appears on many occasions to be defensive of

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<sup>12</sup> ACHPR, UDHR, ICCPR and ECHR.

<sup>13</sup> M H Syed *Human Rights in Islam, Modern perspective* (2003).

<sup>14</sup> Baderin (n 9 above).

Islam, he successfully laid the ground of compatibility between the two views of human rights,<sup>15</sup>

### **1.5 Methodology**

The research shall mainly be library based with documented facts on the subject being explored. The study will adopt a critical research method. However attempts will also be made to solicit (if possible), the views of members of the Muslim scholars and those who have made substantial studies in the matter. Internet sources will also be used where necessary, but the authenticity and veracity of such information and its source shall first be made before relying on them.

### **1.6 The chapters**

This paper is constructed around five main chapters. The first contains the Research question; the second the position of Islam towards people of other faiths through its main sources. The third chapter exposed how Islam is one way or the other used to withstand freedom of belief in the international arena, and how in some isolated cases freedom of belief of Muslims was violated because of scepticism about Islam. The fourth chapter shows the negative impact of such clashes on the African continent illustrated by two countries: Egypt and Nigeria. And the last chapter is dedicated to the conclusion and recommendation.

### **1.7 Limitations of the study**

This study has no ambition of covering all the other aspects of fundamental human rights identifiable in Islam. It intends to have an exposition of the freedoms strictly related to the human conscience and its manifestation. The difficult task is to be able, on the one hand, to address, without being biased, the growing suspicion of the non-Muslims about the Muslim community, considered as intolerant and resistant to all aspects of human rights, and on the other, oppose, without being iconoclast, the views of those Muslims who refuse any idea of conviviality between Islam and other faiths

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<sup>15</sup> Islam is not egocentric with respect to temporal matters, but rather encourages co-operation (ta'awan) for the attainment of the common good of humanity. See n 9 above 14.

## Chapter 2 Islam and Freedom of belief

### 2.1 Introduction

The freedom of belief will be assessed here as how far both the people and the authorities in a given country are tolerant vis-à-vis the other faiths in Islam. Bearing in mind that a religion is different from a convention, and as such Islam might not provide for the freedom of belief in a so concrete form as does an international human rights instrument. Here, our aim is to see how tolerant has been the Islam, from its inception, towards the non-Muslims by comparing the contents of the main sources of the Islamic norms with the positions supported by certain Muslims *ulama* (Muslim legal scholars) and their followers like Sayyid Qutb when he said, in his support for *Jihad* (holy war) against non-Muslims:

This is a natural struggle, which is bound to take place between two such systems that cannot live together for long on the principle of coexistence... And in view of this, it becomes obligatory for Islam to manage its defense. There is no way out for it but to fight out the defensive war imposed on it.<sup>16</sup>

What comes out of confronting such a view with the main sources of Islam? The *Shari'a* (or the Islamic law) is the body of principles that, according to Islamic belief, that Allah has ordained in full or in essence to guide the individual in his relationship to God, fellow Muslims and the rest of the universe.<sup>17</sup> The shorter encyclopaedia of Islam defines *Shari'a* as comprising the totality of Allah's commands relating to the activities of man, except those relating to ethics (*akhlāq*), which are treated separately.<sup>18</sup>

*Shari'a*, being based on the will of God, enjoins automatic and unquestioning obedience from the Muslims. It is concerned with the whole of the Muslim's life: private, public, religious, political, social, domestic and economic. It also regulates the relationship between Muslim and members of other faiths. It has various sources. We will examine how tolerant are those sources towards other faiths. For the purpose of clarity and simplicity, we will classify them into two groups: the divine sources and the human sources. In the first subchapter will be examined the divine sources, the next one will be consecrated to the human sources.

### 2.1 Tolerance of other beliefs in the divine sources of Islamic norms

These sources are believed by Muslims to have either directly emanated from God to his Prophet, Muhammad, or from the traditions or practices of the latter, himself. The ones that came from God are confined in the *Qur'an*, and those associated with the conduct of the

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<sup>16</sup> S Qutb *Jihad in the Cause of Allah* (1988) 139. See also M Moaddel & K Tallatof (eds) *Contemporary Debates in Islam, An anthology of Modernist and fundamentalist thoughts* (2000) 242-243.

<sup>17</sup> M. Shatut *Al Islam* (1954) 5. See also A A Qadri *Islam Jurisprudence in the Modern world* (1973) 15-16.

<sup>18</sup> H .A. R Gibb & J.H Kramer Leiden and E.J Brill *Shorter Encyclopaedia of Islam* (1953) 524.

Prophet are called *Sunnah* (tradition or practice), and are enshrined in the *Haddiths* (the books written by his companions.)

### 2.1.1 Tolerance of other beliefs in the Qur'an

*Qur'an* is the primary and a direct source of the *Shari'a*. It is the pivot upon which all other sources revolve, therefore, the criterion according to which all acts of Muslims are measured. Its principles are used as the benchmark for Muslims attitudes, including with regard to other faiths.

According to Cyrus Hamlin, '[T]he *Qur'an* has but little in it that is capable of being law', however, he acknowledged that 'where it states a principle capable of being so viewed, it stands as the highest authority, and codified law will be in accord with it.'<sup>19</sup>

In respect to freedom of belief, the *Qur'an* has principles capable of being so viewed. Its fundamental one is that there is no obligation in the matter of religion:

There is no compulsion in religion. The right direction is henceforth distinct from the error.<sup>20</sup>

This principle is confirmed in other verses of the *Qur'an*. It shows the impossibility of the compelling people to join Islam, and therefore dissuades anyone from that course.

And had thy Lord willed all who are on the earth would have believed together. Would thou compel men until they become believers? It is not for any soul to believe save by the permission of Allah.<sup>21</sup>

Instead, the *Qur'an* encourages the Muslim to present his claims to humanity not by coercion but rationally through intellectual persuasion. The following verse supports that claim:

Call unto the way of thy Lord with wisdom and fair exhortation, and reason with them in the better way. Thy Lord is best aware of him, who strayeth from his way, and he is best aware of those who go aright.<sup>22</sup>

In its dealing with non-Muslims the *Qur'an* treats them in three categories: the people of the book (Christians and Jews), the atheists and the idolaters (polytheists), and the apostates.

#### i Qur'an and the peoples of the Books

The *Qur'an* expressly recognises all monotheist religions (especially Judaism and Christianity) revealed before Islam and their Holy Books, and sets itself as a continuation of them:

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<sup>19</sup> Quoted by Moulavi Chiragh Ali 'Possibility of Reforms, Political and Social, in Islam' in M Moaddel & K Tallatof (eds) *Contemporary Debates in Islam, An anthology of Modernist and fundamentalist thoughts* (2000) 32.

<sup>20</sup> Sura 2 v 256. According to M Marmaduke, in the introductory note to this *Sura*, at the time when it was revealed at Medina, the people from the Prophet's own tribe, the Qureysh at Mecca were preparing to attack the Muslims in their place of refuge in Medina. See M. Marmaduke *The Meaning of the Glorious Qur'an, An explanatory Translation* (1994) 33. It is the explanation of the Qur'an by M. Marmaduke that is exclusively used in this work.

<sup>21</sup> Sura 10: vv 99 and 100.

<sup>22</sup> Sura : 16 v 125.

It is He (God) who has sent down the Book (the *Qur'an*) to you (Muhammad) with truth, confirming what came before it. And He sent down the Torah and the Gospel.<sup>23</sup>

The next verse confirms the same stance by citing some prophets. It puts them on equal footing.

Say (Muhammad): we believe in Allah and that which is revealed unto us and that which was revealed unto Abraham and Ismael and Issac and Jacob, and the tribes, and that which was vouchsafed unto Moses and Jesus and the Prophets from their Lord. We make no distinction between any of them, and unto Him (God) we have surrendered.<sup>24</sup>

Inviting the people of the Books (Christians and Jews) to Islam, the *Qur'an* uses no belligerent words. Instead, it mentions peace as divine values.

"O People of scripture! Now has our messenger come unto you, expounding unto you much of that which ye used to hide in the scripture, and forgiving much. Now hath come unto you light from Allah and plain scripture." "Whereby Allah guideth him who seeketh his good pleasure unto paths of peace."<sup>25</sup>

Besides the people of Books, the *Qur'an* addresses the issues of other non-Muslim communities. They are what it calls the idolaters, and the atheists.

## ii **Qur'an and the Idolaters**

The *Qur'an* calls idolaters, peoples who worship something else than God, or worship many gods, they are then called polytheists. At the birth of Islam the overwhelming majority of the population of Arabic peninsula was worshipping idols.

The cardinal principle of non-obligation in the matter of religion is also expressed here in respect to the idolaters who were not representing a threat to the coming of Islam, as suggests this verse:

"Freedom from obligation (is proclaimed) from Allah and his Messenger toward the idolaters with whom ye made treaty."<sup>26</sup>

Going in the same direction, this verse is more explicit. It sets the protection of the idolaters as an obligation on Muslims:

"And if anyone of the idolaters seeketh thy protection, then protect him so that he may hear the word of Allah, and afterward convey him to a place of safety. That is because they are the folk who know nothing."<sup>27</sup>

Another confirmation of the Quranic tolerance towards the idolaters made by the following verse. They could enter into treaty with the Muslims and live together.

How can there be a treaty with Allah and his messenger for the idolaters save those with whom ye made a treaty at the inviolable place of worship? So long as they are true to you, be true to them. Allah loveth those who keep their duty.<sup>28</sup>

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<sup>23</sup> Sura: 3 v 3.

<sup>24</sup> n 23 above v 84. This verse is almost identical to *sura* 2 v 136

<sup>25</sup> *Sura* 5: vv 15 and 16. This *sura* is believed to be the last *sura* in the order of revelation, as it is suggested in its verse 3: [T]his day I have perfected your religion for you and completed my favour unto you and have chosen for you as religion Islam. Also see Marmaduke (n 20 above) 96.

<sup>26</sup> *Sura*: 9 v 1.

<sup>27</sup> n 26 above v 6.

However, there was a conditional war allowed by the *Qur'an* against some idolaters as result of their hostile attitude towards Islam. The next verse is that regard very illustrative.

“ [A]nd wage war on all the idolaters as they are waging war on all of you”<sup>29</sup>

One can easily understand that war was subordinated to the aggression of the idolaters but not because of any religious reason.

There is a third category of non-Muslims, which is treated separately in the *Qur'an*. It is the subject of the next subchapter.

### iii **Qur'an and the Apostates**

The apostasy is the fact by an individual to renounce to his faith. In this context it means Islamic faith. Contrary to what some Muslims support, the *Qur'an* does not prescribe any punishment against such person in this world, rather an attraction of severe punishment in the hereafter:

And whoso becometh a renegade and dieth in his disbelief: such are they whose works have fallen both in the world and in the hereafter.<sup>30</sup>

A series of other verses go in the same direction, as confirmed in the same *sura*. It always warns about the future punishment from God. The following verses confirm this position.

“How shall Allah guide a people who disbelieved after their belief and after they bore witness that the Messenger (Muhammad) is true?” “ They are those whose recompense is the curse of Allah, of the angels, and of all mankind “ ” They will abide therein (Hell)”<sup>31</sup>

The *Qur'an* even foresees the repentance of such person and their acceptance by God:

Except for those who repent after that and do righteous things.<sup>32</sup>

More verses are more or less identical the first ones. None prescribe a punishment by men in this world.

“ Verily, those who disbelieved after their belief and then went on increasingly in their disbelief, never will their repentance be accepted. And they are those who are astray.” “ Verily those who disbelieved, and died while they were disbelievers, the earth full of gold will not be accepted from anyone of them if they offer it as ransom.”<sup>33</sup>

Nevertheless, there is a conditional war recommended against the apostate who goes beyond simple denunciation of Islam and either fight against the Muslim or try to incite other people into deserting the religion:

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<sup>28</sup> n 26 above v 7.

<sup>29</sup> n 26 above v 36. It can be understood that this war is allowed when the Muslims are under attack from the idolaters.

<sup>30</sup> *Sura* : 2 v 217.

<sup>31</sup> *Sura* :3 vv 86-88 respectively.

<sup>32</sup> n 31 above v 89.

<sup>33</sup> n 31 above vv 90 and 91.

'But if they repent and establish worship and pay the poor-due (tax to the poor), then are they your brethren in religion...' "And if they break their pledges after their treaty, and assail your religion, then fight the heads of disbelievers.'<sup>34</sup>

They would have you disbelieve as they themselves have disbelieved, so that you may be all be alike. Do not befriend them until they have fled their homes for the cause of God. If they desert you seize them and put them to death wherever you find them.<sup>35</sup>

The problem lies in the interpretation of the Qur'an in order to fit in the realities of the moment. There are some *Hedayas* or commentary of the Muhammadan common Law (the non-written law established after the death of Muhammad), or *Kifaya*, commentary on *Hedaya*, that argue that war against unbelievers is incumbent on all Muslims, that Islam is not a defensive movement<sup>36</sup>. An example of such *Hedaya*, quoted by Moulavi Chiragh Ali<sup>37</sup> and condemned by him is the one made by Nuraddin Ali of Murghinan (died in 593 A.H) "The destruction of sword is incurred by the infidels, although they be not the first aggressors, as appears from the various passages of the sacred writings which are generally received to this effect."

'I do not find any such doctrine enjoined in the *Qur'an*, or taught or preached by Muhammad' (said Moulavi Chiragh Ali). 'His mission was not to wage war or to make converts at the point of the sword, or to exact tribute or exterminate those who did not believe in his religion.'<sup>38</sup>

Chiragh Ali justified the war fought by Muhammad and his followers as defensive.<sup>39</sup> He argued that he and his followers were persecuted, oppressed at intervals and were under a general persecution in Mecca, that they were expelled from their houses and were invaded upon and were warred against; to repel incursions and to gain their liberty of conscience and the security of the followers' lives and the freedom of their religion, he and they waged defensive wars, made defensive treaties, securing the main object of the war: the freedom of their living unmolested at Mecca and Medina, and of having free intercourse to the sacred Mosque, and a free exercise of their religion. All questions quite separate and have nothing

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<sup>34</sup> n 26 above vv 11 and 12 respectively.

<sup>35</sup> n 26 above v 89. This verse has been subject of many severe interpretations. Among them those of Baydawi (died between 1315 or 1318), in his celebrated commentary of the *Qur'an* interprets this verse to mean: 'Whosoever turns his back from his belief (*irtada*), openly or secretly, take him and kill him wheresoever ye find him, like any other infidel. Separate yourself from him altogether. Do not accept intercession in his regard.' And Ibn Kathir in his commentary on the same passage quoting Al Suddi (died in 745), says that since the unbeliever had manifested their unbelief they should be killed.' See Ibn Warrag *Islam, Apostasy and Human rights* (17 April 2004) <[http:// www.jihadwatch.org](http://www.jihadwatch.org) > (accessed on 26 / 7 / 2006).

<sup>36</sup> Moaddel & Tallatof (n 19 above).

<sup>37</sup> n 19 above 71.

<sup>38</sup> As above.

<sup>39</sup> As above.

to do with the subject of popular Jihad, or the crusade for the purpose of proselytising, exacting tribute, and extermination of the idolaters. He concluded that under the natural and international law,<sup>40</sup> Muhammad and his followers had every reason to wage war against their persecutors to obtain their “civil rights and religious freedom” in their native city. ‘All the defensive wars, and the verses of the *Qur’an* relating to the same, were strictly temporary and transitory in their nature.’<sup>41</sup>

This clear position of Chiragh Ali, does not preclude, the mention of the two verses in the *Qur’an* that contain an absolute or non-conditional injunction for making war against the “unbelievers”:

Fight in the way of Allah, and know that Allah is hearer and knower.<sup>42</sup>

Fight against those among the people of the Book who do not believe in God and the last day, who do not forbid what Allah and his messenger have forbidden, and who do not consider the true religion as their religion, until they are subdued and paid *Jizyah* (tribute).<sup>43</sup>

However, these absolute verses will not, by any rule of interpretation, show absolute injunction to wage war against the so-called unbelievers without any provocation or limitation.

There is a rule in the exegesis of the *Qur’an* as well as in other scriptural interpretations, exposed by Moulavi Chiragh Ali.<sup>44</sup> He said that, when two commands: one conditional, the other general or absolute, are found on the same subject, the conditional is to be preferred,

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<sup>40</sup> The principle of Self-defence as recognised by Article 51 of the UN Charter.

<sup>41</sup> Examples of such verses is in *sura* 22 vv39, 40 and 42: “Permission to fight is given to those who are fought against, because they have been wronged, Allah is able to give them victory”. “Those who have been expelled from their homes unjustly only because they said Our Lord is Allah...”, “ And if they belie you (Muhammad) so did belie before them people of Nuh (Noah), Ad and Thamud”

Sura 4 v 91 “You will find others that wish to have security from you and security from their people. Every time they are sent back to temptation, they yield thereto. If they withdraw not from you, nor offer you peace, nor restrain their hands, take them and kill them wherever you find them. In their case we have provided you with clear warrant against them.

Sura 8 vv39, 58, 61 and 62: “ And fight them until persecution is no more, and the religion will all be for Allah. But if they cease, then certainly, Allah is all seer of what they do.” “ And if thou fearest treachery from any folk throw (their treaty) fairly...” ” And if they incline for peace, incline thou also to it and trust in Allah...” “And if they would deceive thee, Allah is sufficient for thee”

Sura 9 vv 10 and 12 : “And they observe toward a believer neither pact nor honour. These are they who are transgressors” “ But if they repent and established worship and pay the poor-due, then are they your brethren in religion...” “ And if they break their pledge, after their treaty and assail your religion, then fight the Heads of the disbelief.”

<sup>42</sup> n 20 above v 244.

<sup>43</sup> n 26 above v 29. According to M Marmaduke, at the time of the revelation of this *sura*, the Christians Byzantine Empire had begun moving against the growing Muslim power. This *sura* was meant to prepare the war against them. (n 20 above).

<sup>44</sup> Moulavi Chiragh ‘The Possibility of Reforms, Political and Social, in Islam’. In *Proposed Political and Social Reforms in Ottoman Empire and Other Muhammadan States* (1883) 73.

and the absolute should be construed as conditional, because the latter is more expressive of the views of the author than the general, which is considered as vague in its expression<sup>45</sup>

This rule (of which we are supportive) means that where a passage of the Qur'an which is ambiguous, or which contains any unusual expression, or in which a doctrine is slightly treated, or is in general terms, it must be interpreted agreeably to what is revealed more clearly in other parts, or where subject is more clearly discussed. A single or general passage is not to be explained in contradiction to many other restricted and conditional passages related to war. Therefore, according to Chiragh's exposé, these two verses should be construed as referring to the conditional wars mentioned above.

Some authors of *Hedaya* and other writers on the common law of Islam quote only those few passages from the *Qur'an*, which are absolute or unconditional, and shut their eyes on those many conditional passages and general scope and tenor of the *Qur'an*.

Given the fact that Muhammad, the founder of Islam was not only a Prophet but also an administrator, judge and military commander, his traditions or practices are logically considered to be the true applications or interpretations of the divine revelation. Therefore, he is a model for all true Muslims. That is why his personal attitude towards other beliefs will be examined in the next subchapter.

### **2.1.2 Tolerance of other beliefs in the Sunnah of the Prophet**

According to An-Naim, there is a disagreement among modern scholars about the exact time of emergence of the concept of the *sunnah* of the prophet as distinguished from the Muslim traditions.<sup>46</sup>

His attitudes towards the non-Muslims are principally illustrated through the various treaties or pacts he made with them. Muhammad made treaties with all the non-Muslims in the areas where he had settled after migrating from persecution of the Qureish, his own tribe, in Mecca.<sup>47</sup>

#### **i Treaty with the Jews**

Muhammad associated the Jews in a treaty of mutual obligations, which included the believers (Muslims) in Medina and the refugees (those who came with the him from Mecca)

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<sup>45</sup> As above.

<sup>46</sup> An-Naim *Toward an Islamic Reformation, Civil Liberties, Human Rights, and International Law*, (1990)

21.

<sup>47</sup> The Jews from Bani Nadir, Bani Quraiza and Bani Qanua tribes came to the Prophet and said 'We have come to make a treaty of peace with thee, to the effect that we shall be neither for nor against you, that we shall aid no one against thee, nor injure any who aids thee; on condition that thou injures neither us nor our friends until we learn what becomes of thy affairs and those of thy people. See H.M. Syed *Human Rights in Islam, Modern perspective* (2003) 22volume 2.

on the one hand and the branches of Jews tribes<sup>48</sup> in Medina who were not ready to accept the Islam, on the other.

This agreement, a lengthy document, is regarded as the first charter of religious toleration.<sup>49</sup> It has been preserved in full by Ibn Hashari.<sup>50</sup> It gave total freedom of religion (belief) to the Jews tribes and branches in Medina.<sup>51</sup>

From the brief summary of that treaty, it appears that it does not merely asserts the unity and oneness of the Muslim community, it asserts the unity of the city state of Medina itself because the Jews and the non-believers had then formed one nation with Muslims, and had equal obligation in the defence and the maintenance of peace in Medina.

In the words of M.H. Syed, the tolerance that was granted to the Jews for the first time to establish free synagogue in the free state of Medina, since the seventh century, makes the charter the first charter of freedom of conscience and religious belief in the history of human being.<sup>52</sup>

For Ali Amir, 'the contract constituted the Prophet as the Magistrate of the nation, as much by his prophetic mission as by virtue of command between himself and his people (his followers).'<sup>53</sup>

Dr Hell regards this contract as a pact of fare statesmanship and a far-reaching importance'. Fare statesmanship because it was the only way of reconciling the tribes and the Meccans (the Prophet and his people) with the united support of the whole of Medina; and far-reaching because it made the Prophet the sole guiding power in the land which had known no common support.<sup>54</sup>

He also made other treaties. Besides the Jews, in Medina there were the Christians and idolaters.

## **ii Treaty with the Christians**

The Pact of Najran was made with the Christians. In that Pact it was stated, among others, that the lives of the people of Najran, and their surrounding area, as well as their religion,

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<sup>48</sup> Bani Auf; Bani Al-Harith, Bani Sa'ida, Bani Jusham; Bani an-Najjar; Bani Amr; Bani Hasm; Bani Sa'alaba, Bani Jafna, Bani al-Shotaiba. See M A Khan *Human Rights in Muslim world, fundamentalism, constitutionalism and politics* (2003) 443-446.

<sup>49</sup> Khan (n 48 above) 23.

<sup>50</sup> As above.

<sup>51</sup> From para4-12 it provides among others: the Jews shall be responsible of their own tribe; pay their blood money (tax); are free to adhere to their religion, and the Muslims to theirs. Except religious matters Muslims and Jews should be regarded as belonging to single party. See (n 48 above).

<sup>52</sup> Khan (n 48 above) 25.

<sup>53</sup> S. A Amr *The Spirit of Islam* (1922) 55 (add my emphasis).

<sup>54</sup> Hell 'Arabian Civilisation' quoted in Khan (n 48 above) 25.

their land, property and cattle, their messengers, and their places of worship are under the protection of Allah and guardianship of his Prophet.<sup>55</sup>

### **iii Treaty with the idolaters**

The Prophet entered into treaty with some Arab pagan tribes. The pact of Saqeef (Taif), where he had been molested by the Arab pagans under the direction of three brothers called Abd Ya Lail, Mas'ood, and Habeeb, who belonged to the Omair tribe which was the most important tribe there. The treaty declared the valley of Saqeef as *haram* (haven). Another treaty was passed with Akbar bin Abdul Qais who was a chieftain of Bahrain. He made treaty with Sohail Ibn Amr at Hudaibya, in which it was stated that there should be no war between the parties for ten years.<sup>56</sup>

These sources should be the main references of the Muslims in their conduct with non-Muslims. It cannot be conceived that a true Muslim will adopt another behaviour contrary to them and still be compatible with the true command of God and his Prophet Muhammad.

In addition to these sources there have been other sources developed through the evolution of the Muslim community. They are the human sources of the Islamic norms. Being that they have fingerprint, the divergence among them appeared to be inevitable.

## **2.2 Problems with the human sources of Islamic norms**

After the death of Prophet, with the later *ummayyads*<sup>57</sup> encouraging mass conversions in the conquered territories, Islam spread to villages among non-Arab peasants, and made the need for an Islamic legal and administrative system more urgent. The *ummayyads* failed to meet this need. As reaction, the religious intellectuals sided with the Abbasid revolutionary forces as they rebelled against the *Ummayyads*.<sup>58</sup>

The door was open was the intellectual activities in Islam, consequently there were various and conflicting approaches to the issues.

### **2.2.1 Proliferation of schools**

The early *Abbasids*<sup>59</sup> concentrated their efforts on developing Islam as a social system thus consolidating the empire. It took nearly two centuries for the Islamic intellectuals to

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<sup>55</sup> Najran was the largest centre of Christianity in Arabia. It is now a district of North Yemen. There was a splendid Cathedral that the Christians considered as *Kaaba*. See Khan (n 48 above) 450.

<sup>56</sup> Khan (n48 above) 51-54.

<sup>57</sup> The first Arab Muslim dynasty of caliphs (religious leaders) founded by Muawiyah in 661 and lasting until 750 AD, see Encarta Encyclopaedia standard (2004), *Ummayyad*.

<sup>58</sup> Hiro (n 11 above) 25.

<sup>59</sup> The dynasty of caliphs who ruled the caliphate of Islam 750 until 1258. They were all descendants of Abbas, a member of *Qureish* tribe of Mecca, and an uncle of the Prophet Muhammad. As above.

accomplish their task. They found that out of 6,616 verses of the *Qur'an* only 80 verses concern legal issues, and these verses are mainly about women, marriage, family and inheritance.<sup>60</sup>

They had to explore the practices of the Prophets on political, economic and military matters. Elaborate means was employed to collect his saying and doings. In the ninth century, some 2,700 saying and doing of the Prophet were to be codified and published in six canonical collections, called *hadiths* (the reports)<sup>61</sup>.

Among the first to codify the *Qur'an* and the *sunnah* was Abu Hanifa al Numan (699-769), an Iranian resident in Kufa. His school was adopted by the Abbasids. Later, Malik ibn Anas (714-776) developed his own. If the *Hanafi* ( of Hanifa) code is liberal and urban oriented, the *Maliki* ( of Malik) is conservative and pastoral oriented.<sup>62</sup>

However, among all the *ulama*, the one that made more impression on the legal administrative apparatus was Muhammad ibn Idris al Shafii (767-820), a student of Malik. He founded the science of *fiqh* (religious jurisprudence), on four pillars: the *Qur'an*, the *Sunnah*, the *Ijma* or consensus of the *ummah* (community) and *qyas* (analogical reasoning). The analogical reasoning allowed the community to incorporate new situations into the system of the *Shari'a*, without disturbing the primacy of the *Qur'an* and the *sunnah*. It also permitted individual opinion and differences. By pursuing this method, the *ulama* could merge Prophet Muhammad's teachings, the *Qur'an*, the Arab and non-Arab traditions into a single canonical system applicable to the life of all Muslims.<sup>63</sup>

The other school (the fourth) is that of Ahmad ibn Hanbal (780-855). He was against the legal superstructure built on the *Qur'an* and the *sunnah*. For him those two instruments were enough for law, there should not be such thing like *Ijma* and *qyas*. His fundamentalist approach was unpopular.<sup>64</sup>

Another event relating to the human sources is also relevant. It will be the subject of the next subchapter.

### 2.2.2 Shutting of the door of the Ijthad

For the next several generations mostly of the *sunni* (the majority Muslim wing) *ulama* settled for one of these four schools, which set the boundaries of *Shari'a*, from the fundamentalist *Hanbali* ( of Hanbal) to the liberal *Hanafi* (of Hanafa).

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<sup>60</sup> As above. However, An-Naim speaks of 6,219 verses in the *Qur'an*, see An-Naim (n 46 above) 20.

<sup>61</sup> As above.

<sup>62</sup> As above.

<sup>63</sup> As above.

<sup>64</sup> As above.

In order not to upset the consensus thus far reached, the *ulama* (mainly the sunni community), by the ninth century onwards declared that the door of the *Ijtihad* (creative interpretation in Islam) had been shut.<sup>65</sup> The cumulative effect of this stance was to limit the adaptability of Islam to realities of the moment. It became rigid reflecting the status quo, and became perceptibly hostile to any novelty in the last centuries of the second millennium (Gregorian calendar). This was even exacerbated as the pace of technological development in the west quickened, and the rivalry between the Ottoman caliphates and European powers sharpened.<sup>66</sup>

From Moulavi Chiragh Ali's point of view, the *lex non-scripta*, or the Common Law of Islam, is an unwritten law that has been compiled from a very few verses of the *Qur'an*, as well as from the custom and usages of the country, supported by traditions contradictory in themselves. He said that it was not written by Muhammad, the Prophet, nor dictated by him, nor compiled in his time, nor compiled even in the first century of the Hegira. It comprises those principles, usages and rules of conduct applicable to the government and security of person and property, which do not depend for their authority, or are not based upon any existing, express and positive declaration of the *Qur'an* or the revealed law. He further argued that it mainly consists of old-established Arab civil institutions, customs, and the traditionary saying of the prophet (most of them not genuine) and of his companions; and, of considerations to humanity, reason, common sense, and also the principles of moral fitness, and public convenience included in the words *Ijma*, and *qyas*.<sup>67</sup>

It is impossible, according to him, 'to trace the origin of these early rulings, for they are based mainly on the analogy of some admitted or acknowledged casuistry', and as such, it is but a simple truth to say that such decision or rulings can in no wise way be *essentially and eternally unchangeable*.<sup>68</sup>

In the same course of ideas, An-Naim points out that the lack of reference to the *Qur'an* in any given instances during the early period may be simply because the particular scholar did not see verse of the *Qur'an* to be relevant to the issue at hand. That supports the idea that those laws were meant give solution to the problems according to the circumstances, but not to be eternal or unchangeable.<sup>69</sup>

## 2.3 Conclusion

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<sup>65</sup> C Dalacoura (2003), *Islam and Human Rights*, p 4.

<sup>66</sup> Hiro (n 11 above) 24-27.

<sup>67</sup> Moaddel & Tallatof (n 19 above) 33.

<sup>68</sup> n 19 above 73.

<sup>69</sup> Syed (n 47 above).

If strictly limited to the main sources of Islam, it can be said that there is room for peaceful coexistence between Islam and other beliefs. Both the *Qur'an* and the *Sunnah* command for the respect of other people's conscience in matter of belief. However, due to the fact that the *Qur'an*, which is a religious scripture, was not meant to regulate every single aspect of human life in this world, there have been some interpretations of its teachings to suit the realities of the moment mainly by the *Ummayad* dynasty. This process like any other human enterprise was evolving, therefore subject to constant changes. When it was stopped sometime in the history of Islam by people who could not make unanimity in the Muslim community because they never had any divine authority, there was a sort of *laisser-faire* in the interpretations.

The atmosphere created by the various ensuing misinterpretations, for reasons, not always religious, rendered difficult the accommodation of values different source. That aspect will be analysed in the next chapter.

## **Chapter 3: Freedom of belief in the international human rights mechanism, and Islam**

### **3.1 Introduction**

Despite the religious and ideological diversity characterizing the international community, the necessity has been recognised for a society in which the right to freedom of religious belief and conscience is guaranteed. The concept of freedom of belief influences all aspects of international relations and it cuts across every feature of international law today. It is a crucial objective of the international community that permeates all other objective of the United Nations<sup>70</sup> for its indispensability to human dignity; as a result it has become subject of numerous international human rights instruments. The controversy this freedom occasioned during the adoption of those instruments, which have either universal or regional characteristics, highlighted the sensitivity of the issue.

### **3.2 Global human rights systems**

Human rights instruments, which provide for freedom of belief and expression at the global level, are mainly the Universal Declaration on Human Rights (hereinafter the Universal Declaration) and the International Covenant on Civil and Political Rights (hereinafter the ICCPR). The former applies to all States, having values of international custom, whereas the latter applies only to states parties.

#### **3.2.1 Universal Declaration of Human Rights, and Islamic Resentment**

Since 1945 it is stipulated in Charter of the United Nations (the UN) that one of its purposes is to promote and encourage the respect for fundamental freedoms for all.<sup>71</sup> The Universal Declaration has been promulgated as the expression of that endeavor of the UN on 10 December 1948. It was the first major attempt by all the states to have a single instrument as the substratum of human rights principles. It constitutes the first comprehensive catalogue of the rights of the human person.

However, there are diverging opinions about the conceptual interpretation and scope of freedom of belief as provided by the Universal Declaration. Nevertheless, as recognised by the drafters, a common understanding of these rights is of the greatest importance for their full realization.<sup>72</sup>

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<sup>70</sup> Art 1 of the UN Charter.

<sup>71</sup> Art 1(3) of the UN Charter.

<sup>72</sup> 7th Preambular paragraph of UDHR.

One of the stumbling blocks during the adoption of the Universal Declaration was the freedom of belief. The provision concerning freedom of thought, conscience and religion guarantees freedom to change one's religion:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, either alone or in community with others in a public or private, to manifest this religion or belief in teaching, practice, worship and observance.<sup>73</sup>

Among the states that abstained from voting was Saudi Arabia, which is considered to be the land of Islam for hosting many sacred sites of that religion.<sup>74</sup> Its abstention was in the name of Islam, alleging that the extensive conception of freedom of religion retained by the Universal Declaration, by allowing a change of religion, was inconceivable in *Shari'a*.<sup>75</sup> The abstention of Saudi Arabia, along with other States including Soviet Union and its allies,<sup>76</sup> was an obstacle to the universal ambition signalled in the preambular paragraph.<sup>77</sup> Islam appeared then as an obstacle to the universality of human rights principles.

It should be noted that the representative of Pakistan opposed the view of the other Muslim States on the ground that Islam was a missionary religion, which strives to convince people in their faith and their way of living by becoming Muslim, and also it recognises the same freedom of conversion to other religions.<sup>78</sup>

At the moment the Universal Declaration was adopted, there was a strong feeling that human rights should be translated into a direct legally binding instrument for all States. This general feeling led to intensive negotiations within the framework of the Commission on Human Rights, the political body established in the 1946. The outcome of these negotiations was the adoption of the two International covenants in 1966.<sup>79</sup>

In addition to the Universal Declaration, the International Covenant on Civil and Political Rights addresses the questions of freedoms of belief. Even though the formulation of the provisions differs slightly.

### **3.2.2 International Covenant on Civil and Political Rights and the obstacle in the name of Islam**

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<sup>73</sup> Art 18 of Universal Declaration.

<sup>74</sup> At Mecca, where is the Muslim first sacred shrine, the Kaaba, and Medina where is the second Mosque.

<sup>75</sup> Gilles Lebreton *Liberté publique et droits de l'homme* (2003) 125.

<sup>76</sup> Ukraine, Byelorussia, Poland, Czechoslovakia and Yugoslavia UN Doc A/PV.182 890 (1948), they considered that certain passages of the Universal Declaration were openly in favour of the theory of natural law, which is western philosophy, also see above (n 75 above) 125-126.

<sup>77</sup> n 72 above.

<sup>78</sup> n 75 above.

<sup>79</sup> International Covenant on Economic, Cultural and Social Rights & International Covenant on Civil and Political Rights. See Civil and Political Rights Committee, fact Sheet No.15 (Rev.1) 1.

The CCPR, unlike the Universal Declaration is a binding treaty. It defines human rights and fundamental freedoms and covers a variety of civil and political rights including freedom of belief. Furthermore, it sets basic human rights standards relating to civil and political rights, and has established a Committee to oversee the implementation of the treaty by state parties. The CCPR provides for freedoms of belief as follows:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest this religion or belief in worship, observance, practice and teaching.<sup>80</sup>

The initial attempt to define the scope of Article 18 of the CCPR in light of Article 18 of the Universal Declaration, met with vigorous opposition from the Muslim countries such as Egypt, Saudi Arabia, Yemen and Afghanistan. Those countries required that the Article should be struck out.<sup>81</sup> Their objection was based on the clause 'freedom to change one's religion', as found in the Universal Declaration.

To substantiate his objection, the Saudi delegate argued that 'some religions emphasise the importance of missionary work, and are organised for proselytising activities, while others are not'. He expressed his apprehension of the possibility that 'powerful states with a proselytising state religion, if it has mass media of information at its disposal, might well use them to cast doubt in the minds of members of the other faith'.<sup>82</sup>

In order to address such apprehension, a compromise was reached by changing the language of the clause to '[t]his right shall include freedom to have or adopt a religion or belief of one's choice'. This formulation reflects the proposition submitted by Brazil, the Philippines and the United Kingdom.<sup>83</sup> On that basis, the article was adopted unanimously with no reservation.<sup>84</sup>

Comparing between the English and French versions of Article 18 of CCPR, one comes to the conclusion that the French version covers broader manifestation of human conscience. However, the French version seems to be more extensive in its formulation:

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<sup>80</sup> Art 18 of the CCPR.

<sup>81</sup> Badarin (n 9 above) 119.

<sup>82</sup> He argued that '[i]f individual was to enjoy true religious freedom, he had to be protected against pressure, proselytism and also against errors and heresies'. He concluded his argument by saying that '[t]he second sentence overemphasised the right to change one's religion' and 'unqualified wording adopted did not take into account the state of mind prevailing in some societies, nor did it allow for the situation, in other societies, of individuals who did not conform to established standards and who might for example, have a purely ethical religion'. See UN Docs A/C.3/SR.1021 para11, A/C.3/SR.1022, para 27 (1960); and (n 75 above).

<sup>83</sup> UN Doc. A/C.3/SR, 1026 (1961) para.26; Nowak (n 1 above) 312.

<sup>84</sup> Badarin (n 9 above) 119.

[c]e droit implique la liberté d'avoir ou d'adopter une religion ou une conviction de son choix.<sup>85</sup> Here, the word conviction goes beyond a religious belief. The English version suggests that in which "belief" is more likely synonymous to religion. It is the same interpretation of right to freedom of belief meaning 'religious belief' that is confirmed in the *travaux préparatoires* of the CCPR.<sup>86</sup>

According to the Human Rights Committee (HRC)'s General Comment 22,<sup>87</sup> the freedom 'to have or to adopt' includes freedom to replace one's current religion or belief with another or to adopt atheist views, as well as the right to retain one's religion or belief.<sup>88</sup> The HRC reiterated the same position after considering Jordan's third periodic report to the CCPR in 1994.<sup>89</sup>

Defending the position of his country, the Saudi Arabian representative to the third Committee<sup>90</sup> of the UN General Assembly (GA) who had suggested the suppression of the clause related to the right to freedom 'to change one's religion or belief', mentioned that he did not recognise that the freedoms to change, maintain and even renounce one's religion or belief were implicit in the right to freedom of thought, conscience and religion (belief) under Article 18 of the CCPR.<sup>91</sup>

The Universal Declaration and the CCPR are not the only human rights instruments in the global setting to have suffered from the hostility of civilizations. The case of the Convention on the Rights of the Child will further illustrate the crisis.

### 3.2.3 The Convention on the Rights of the Child and Islam

The Convention on the Rights of the Child (CRC), was adopted by the UN GA in Resolution 44/25 of 20 November 1989, and entered into force on 2 September 1990<sup>92</sup>. The reason behind the convention is the recognition that the child needs special protection due his/her mental and physical immaturity as stated in the preamble of the Convention:

Bearing in mind that, as indicated in the Declaration of the Rights of the Child 'the child by reason of his physical immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.'<sup>93</sup>

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<sup>85</sup> Art 18 (1) of CCPR. It can be translated as 'this right implies the freedom to have or to adopt a religion or a conviction of his/her choice.

<sup>86</sup> A/4625; also see Nowak (n1 above) 316.

<sup>87</sup> On Article 18 of CCPR.

<sup>88</sup> HRC's General Comment 22, Art 18 CCPR (forty-eighth session, 1993) para25.

<sup>89</sup> UN Doc A/49/40 (1994).

<sup>90</sup> Fifteenth Session (1960).

<sup>91</sup> n 83 above.

<sup>92</sup> T.V Banning et al *Human Rights Instruments* (2004) 34.

<sup>93</sup> 9th preambular paragraph of the Convention.

Even though there were several reservations entered on one or the other provisions of the CRC,<sup>94</sup> all the reservations on article 14(1)<sup>95</sup> were made by Muslim countries, and all Muslim states that entered reservation alleged Islam as their reason.<sup>96</sup>

After this overview of freedom of belief in global context, we shall examine the regional mechanisms, and their relation to Islam appearing as violator as well as victim of violation of freedom of belief.

### **3.3 Regional human rights systems**

In addition to the UN Charter-based system of human rights protection, which applies to all State members, and the UN treaty-based system, which applies only to state parties, many African, American, and in Europe states have adopted human rights instruments at the regional level. All of these regional human rights instruments, more or less, provide for protection of freedom of belief, as will be exposed below.

#### **3.3.1 African regional human rights mechanism under Islamic influence**

In the African human rights system, two instruments cover freedom of belief. One is a general instrument; the African Charter on Human and Peoples' Rights (ACHPR), and the second is specific, the African Charter on the Rights and Welfare of the Child (ACRWC).

##### **i African Charter on Human and Peoples' Rights**

The African Charter on Human and Peoples' Rights (the African Charter), also referred to as the Banjul Charter was adopted in Nairobi, Kenya on 27 June 1981, and entered into force on 21 October 1986.<sup>97</sup> It is the regional mechanism for the promotion and protection of human rights on the African continent. It is a general human rights treaty and has now been ratified by the entire 53 state members of the OAU/AU by 1 January 2002.<sup>98</sup> It provides for a wide range of human rights, including social, economic and cultural rights; civil and political rights, and the peoples' rights.

Freedom of belief is among the civil and political rights guaranteed in the African Charter for which it stipulates:

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<sup>94</sup> 74 countries, including 17 Muslim countries, < <http://www.ohchr.org/english/countries/ratification>>. (accessed, 16 October 2006).

<sup>95</sup> Art 14: States parties shall respect the right of the child to freedom of thought, conscience and religion.

<sup>96</sup> Afghanistan, Algeria, Bangladesh, Djibouti, Egypt, Indonesia, Iraq, Iran, Jordan, Kuwait, Malaysia, Mauritania, Morocco, Oman, Saudi Arabia, Syria and United Arab Emirate. See (n 94 above).

<sup>97</sup> Heynes (n 5 above) 134.

<sup>98</sup> F. Viljoen 'The African Commission on Human and Peoples' Rights' in Heynes (n 5 above) 390.

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these rights.<sup>99</sup>

Unlike the Universal Declaration and the CCPR, the African Charter benefited from what Professor Frans Viljoen calls 'universal acceptance'.<sup>100</sup> The reason for the global acceptance is most likely the formulation of the provisions covering sensitive rights such as freedom of belief. The African Charter does not provide any scope for freedom of belief or religion and at the same time it is subjected to a clawback clause,<sup>101</sup> which can be interpreted by states to restrict a right.

The limitations to the above-mentioned article, along with others, may reflect the influence of Muslim countries on the African human rights system. For example the word Zionism,<sup>102</sup> which Professor Hansugule considers as having nothing to do with the African human rights system.<sup>103</sup>

The weak approach of the African Charter to sensitive issues like freedom of belief has attracted several criticisms. For instance Obinna Okere, as quoted by Gino Naldi, describes the African Charter as 'modest in its objective and flexible in its means'.<sup>104</sup>

However, the African Commission on Human and Peoples' Rights (the African Commission), which has the function of promoting and protecting human right,<sup>105</sup> has, fortunately taken a different approach towards the protection of these freedoms. For example it has stated that the phrase 'subject to law' could be understood to refer rather to international law, not domestic law:

In regulating the use of this right (freedom of association, under Article 10), the competent authorities should not enact provisions, which would limit the exercise of this freedom. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international human rights standards.<sup>106</sup>

To extend this principle that was developed in relation to the freedom of association to all the rights guaranteed under the African Charter, the African Commission cited it in subsequent cases and generalized it as follows:

With these words the Commission states a general principle that applies to all rights, not only freedom of association. Government should avoid restricting rights, and take special care with regard to those rights

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<sup>99</sup> Articles 8 of the African Charter.

<sup>100</sup> Heynes (n 5 above) 390.

<sup>101</sup> The clause 'Subject to law and order' in article 8 of the African Charter.

<sup>102</sup> Ninth preambular paragraph.

<sup>103</sup> M. Hansugule during the lecture of 19 July 2006 on the reform of the African human rights system.

<sup>104</sup> G.J. Naldi 'Future Trends in Human Rights in Africa' in Malcolm Evans and Rachel Murray (eds) *African Charter on Human and Peoples' Rights, The system in Practice 1986-2000* (2004) 5-6.

<sup>105</sup> Art 45 (1 & 2) of the African Charter.

<sup>106</sup> Communication 101/93, *Civil Liberties Organisation v. Nigeria*, 8th Annual Activities Report (1995) para15.

protected by constitutional or international human rights law. No situation justifies the wholesale violation of human rights.<sup>107</sup>

In respect to Islam, the Commission made its position clear in the case *Amnesty International and Others against Sudan*. In this case, there were allegations of application of *Shari'a* to non-Muslims in order to convert them to Islam; also the interdiction of Christians to build their churches; the harassment of members of the Christian clergy; arbitrary arrest of Christians, expulsion and denial of access to work and food aid.<sup>108</sup>

In the face of Sudanese authorities' failure to respond in a convincing manner, the Commission found that there had been violations of several provisions of the African Charter, including the one on freedom of religion.<sup>109</sup> It recommended strongly to the government of Sudan to put an end to those violations in order to abide by its obligation under the African Charter.<sup>110</sup>

In addition to the African Charter, which is a general human rights treaty, there is a specific human rights treaty, which provides for freedoms of belief. It is the African Charter on the Rights and Welfare of the Child.

## **ii African Charter on the Rights and Welfare of the Child**

The 26th Ordinary Session of the Assembly of Heads of States and Government of the OAU adopted the African Charter on the Rights and Welfare of the Child, on 11 July 1990 in Addis Ababa, Ethiopia.<sup>111</sup>

This Charter provides for the right to freedom of belief (religion) of the child and formulates it as follows:

Every child shall have the right to freedom of thought, conscience and religion.

The parents and where applicable, legal guardians shall have the duty to provide guidance and direction in the exercise of these rights having regard to the evolving capacities and best interest of the child.<sup>112</sup>

The formulation of this article is similar to that of the African Charter. It guarantees freedom of belief under the guidance of the parents.

Other regions, Europe and Americas have their Human Rights Systems. The human rights instruments incarnating the aspiration of the peoples guarantee the freedom of belief, among others.

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<sup>107</sup> Communication 102/93 *Constitution Rights Project v. Nigeria*, 24th Ordinary Session, October 1998, 12th Annual Activities Report para58.

<sup>108</sup> Communication 48/90, 50/91, 52/91, 89/93 *Amnesty International, Comité Loosli Bachelard, Lawyers Committee for Human Rights, Assembly of Members of the Episcopal Conference of East Africa v Sudan* (1999), paras72-74. 13th Annual Activities Report. See AHRLR (2000) 323.

<sup>109</sup> Art 8 of the Charter. (n 108above) para84.

<sup>110</sup> n 108 above para85.

<sup>111</sup> Banning (n 92 above) 138.

<sup>112</sup> Art 9(1 and 2) of ACRWC.

### 3.3.2 European regional human rights mechanism

#### i The European Convention for the Protection of Human Rights and Fundamental Freedoms

The Council of Europe, which was created in 1949, drafted the European Convention for the Protection of Human Rights and fundamental Freedoms<sup>113</sup> (the European Convention) and opened it for signature in Rome 4 November 1950. It entered into force 3 September 1953.<sup>114</sup> The European Convention and its Additional Protocol constitute a general human rights treaty focused on civil and political rights. For having established a human rights court, the European Court of Human Rights, back in 1959, the Council of Europe is said to have assumed a pioneering role in the context of human rights protection.<sup>115</sup> Freedom of belief is fully guaranteed in the European human rights system and expressed in the clearest possible manner.<sup>116</sup>

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom either alone or in community with others, in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.<sup>117</sup>

Any limitations to this freedom must be within the law and necessary in a democratic society as provided by the Convention. The next article supplements as to set the scope of the manifestation of one's belief:

Freedom to manifest one's religion or belief shall be subject to only such limitations as prescribed by law and are necessary in a democratic society and in the interest of public safety, for the protection of public order, health and morals, or for the protection of the rights and freedoms of others.<sup>118</sup>

#### ii Scepticism about Islam

In spite of the abovementioned provisions guaranteeing freedom of belief, the banning of the wearing of the headscarf by Muslim girls in public schools in France pitted the right so guaranteed.<sup>119</sup>

To recall the background of that legislation, the "affaire du foulard" or headscarf affair, began on 19 October 1989 when M. Ernest Chenière, headmaster of the secondary school Gabriel-Havez of Creil (Oise), forbade three girls from attending classes with their heads

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<sup>113</sup> As amended by Protocol No. 11

<sup>114</sup> M Nowak *Introduction to International Human Rights Regime* (2002) 161.

<sup>115</sup> Nowak (n114 above) 160.

<sup>116</sup> One can imagine that because of lack of Islamic influence in Europe, the provision protecting freedom of belief or religion suffered no alteration as compared to the CCPR.

<sup>117</sup> Article 9 (1) of ECHR.

<sup>118</sup> Article 9 (2) of ECHR.

<sup>119</sup> On 10 February 2004, the French National Assembly voted by an overwhelming majority of 494 for, 36 against, and with 31 abstentions to ban the wearing of all religious symbols from public schools. <<http://www.assemblee-nationale.fr>> (accessed 28 July 2006).

covered. The ensuing public confrontation led the Ministry of National Education to consult the State Council (Le Conseil d'Etat)<sup>120</sup> on the matter. The decision of the State Council tried to reconcile freedom to manifest one's religion as provided by the ECHR, and the principle of secularization of public schools.<sup>121</sup>

The trouble linked to the headscarf is not limited to schoolgirls alone. Another Muslim woman was refused the renewal of her contract as a social assistant on the ground that she refused to take off her headscarf at work. That refusal to renew the contract was found as legal.<sup>122</sup>

Similar incident occurred in Germany in 1998, and led to a series of bans on wearing the headscarf by the schoolteachers in the German public schools.<sup>123</sup> These acts raise the concern about freedom of belief in those European countries generally known for their respect of human rights. How to reconcile these measures with the spirit of the European Convention?

The American states have their regional setting in which freedom of belief is guaranteed. It is composed of two mechanisms.

### 3.3.3 American regional human rights mechanism

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<sup>120</sup> The highest Instance of Administrative Order of Jurisdiction in France. The other Order is the Judicial Order of Jurisdiction, competent in matters not involving Public Service (Administration). The French judicial system is divided into those two Orders.

<sup>121</sup> 27 November 1989. RFDA (1990) p6. See also Lebreton (n 76 above) 423.

<sup>122</sup> TA Paris 17/10/2002, *Madame Ebrahimian* AJDA 2003, p389. In order to guarantee the neutrality of the public service, the French law feel that the administration should not know the opinion of its agents and those it administers. This was in reaction to certain practices discovered by the "scandale des fiches" (files scandal) of 1905. Lebreton (n76 above) 389.

<sup>123</sup> Ms Fereshta Ludin, a Muslim woman was rejected for a teaching job in a public in Stuttgart (state of Baden-Wurttemberg) because of her insistence of covering her head. A lower considered the disqualification rightful; the Constitutional Court of the state ruled in the same direction, judging the wearing of headscarf contradictory to the state law banning all religious symbol. <<http://www.islamtoday.com>> (accessed on 11 August 2006) ]. Ms Ludin appealed against the decision in 2002 to the German Supreme Court alleging that her right to freedom of religion has been violated. The Supreme Court ruled against the previous decision stating that it is the legislators, not the court nor un-elected public authorities to decide on headscarf issue. The Court emphasised that the individual states have a wide window opportunities with regard to decision affecting the school system <(http://[www.immigrationinformation.org/feature/display](http://www.immigrationinformation.org/feature/display)> (accessed on 11 August 2006). On 31 May 2006, North-Rhine Westphalia became the 8<sup>th</sup> German states out of 16 to ban the wearing of headscarf by Muslim teachers in state school. The others are: Bayern, Baden-Wurttember (the 1<sup>st</sup>), Lower-saxony, Saarland, Hesse, Berlin, and Bremen<[<http://www.bbc.uk.co>] (accessed on 11August 2006)].

The two processes for the protection of human rights in the Inter-American system,<sup>124</sup> the American Declaration of the Rights and Duties of Man (the American Declaration) and the American Convention on Human Rights (the American Convention.)

### **i American Declaration of the Rights and Duties of Man, and the American Convention on Human Rights**

When the American Declaration applies to all of the states of the Organisation of the American States (OAS), the American convention applies only to 24 states parties in Latin America and the Caribbean.<sup>125</sup> They both provide for the right to freedom of belief. The American Declaration is relatively limited in its formulation, and does not set any scope now limitation:

Every person has the right to freely profess a religion faith, and to manifest and practice both in public and private.<sup>126</sup>

The American Convention is more explicit in the sense that it gives the scope of the freedom, which includes freedom to change one's religion. That makes it similar to the Universal Declaration:

Everyone has the right to freedom of conscience and religion. This includes freedom to maintain or to change one's religion or beliefs and freedom to profess or disseminate one's religion or beliefs, individually or together with others, in public or in private.<sup>127</sup>

### **ii Incidents of Islamic mark**

The notable incidents relating to Islam in the Americas occurred in Canada. According to the Report released by the Bureau of Democracy and Human Rights, and Labor, on September 2004, a 16 year-old Muslim student was expelled from a private school in Quebec because she refused to remove her headscarf. The Quebec Human Rights Commission condemned the act; however no legal action was taken against the school<sup>128</sup>. According to the same Report, quoting the Council on American Islamic Relations in Canada (CAIR-CAN), on 26 March 2004, a mosque was vandalised in Pickering, Ontario, and anti-Muslim sayings were

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<sup>124</sup> The ADRDM, which is applicable to member states of Organisation of the American States (OAS), has been adopted by the ninth international conference under the Resolution XXX of 2 May 1948 in Bogotá, Colombia. It is not legally binding. The ACHR was adopted in 1969 in San Jose, Costa Rica. It is legally binding only on states parties. Nowak (n 114 above) 191&196.

<sup>125</sup> Nowak (n114 above) 191.

<sup>126</sup> Art 3 of the American Declaration.

<sup>127</sup> Art 12 (1) of the American Convention.

<sup>128</sup> According the same source. Even though Canada has not yet ratified the American Convention, it has an obligation (be it moral) to react, under the American Declaration, as soft law, and a source of international customary law.

spray-painted on its walls. The same source alleged that it was the fifteenth documented act against mosques and Islamic institutions since September 2001.<sup>129</sup>

The next region is the birthplace of Islam and the most affected by Islamic civilisation and culture. It is the Region of Asia and Pacific.

### **3.3.4 Asia and Pacific Region**

This region, the core of Islam<sup>130</sup>, has no regional human rights system.<sup>131</sup> However, the states of Islamic orientation, including those of Africa, have been engaged in elaborating human rights system with Islamic consideration. These instruments will be analysed in the next subchapter.

## **3.4 Human rights instruments in the Islamic framework**

Due to the fact that some Muslim States have been pessimist about the Universal Declaration since its inception, the Muslim *ummah* (community) decided to identify itself with human rights concepts through means more reflective of their religious belief. That is against the backdrop of their scepticism about the other human rights instruments, as observed above. Iran is even reported to have requested that the 'Universal Declaration should be amended, the secular and western document should give way to an instrument universally accepted'.<sup>132</sup> Some human rights instruments were created in that endeavour. The legal value of those instruments is not our concern; the most important thing is how far they recognise of freedom of belief as a fundamental right.

### **3.4.1 Universal Islamic Declaration of Human Rights**

The first step in that direction was taken by the Universal Islamic Declaration of Human Rights (hereinafter Islamic Declaration) on 19 September 1981 in Paris, which corresponded

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<sup>129</sup> <<http://www.state.gov/g/drl/rls/irf/2004/35529.htm>> (accessed on 11 August 2006). One can easily understand that those acts of vandalism were in reaction to 11 September 2001 terrorist attacks.

<sup>130</sup> Mecca and Medina.

<sup>131</sup> However, there have been some interesting initiatives from NGOs like Asian Human Rights Charter prepared by over 200 NGOs, and at sub regional level like Association of Southeast Asian Nations (ASEAN), or South Asian Association for Regional Cooperation (SAARC), and network of national human institutions called the Asia-Pacific forum for National Human Rights Institutions. Moreover, in a series of regional workshops, notably the one held in Tehran in 1998, a framework of cooperation was established and consensus was reached on a principle of step-by-step approach that could lead to regional arrangement through extensive consultations among governments.

<sup>132</sup> 26/11/1982, cited by Abu Sahlieh RGDIP (1985) 632, also see Lebreton (n 76 above) 129.

to 21 Dhul Qaidah 1400 of the Islamic calendar.<sup>133</sup> It followed the Universal Islamic Declaration which was announced at the International Conference on the Prophet Muhammad and his message, held in London from 12 to 15 April 1980.

The Islamic Declaration purports to treat the right to freedom of belief, thought and speech in the same provision, but separately from freedom of religion, which is treated in a different article:

Every person has the right to express his thoughts and beliefs so long as he remains within the limits prescribed by the law. No one, however, is entitled to disseminate falsehood or to circulate report that may outrage public decency, or to indulge in slander, innuendo, or to cast defamatory aspersions on other persons.<sup>134</sup>

This provision is neutral in nature and imposes a secular restraint on freedom of expression, while sidelining freedom of belief. Even though, if narrowly interpreted, some state authorities can use the limitations to make serious inroads into the rights guaranteed, it is substantially in conformity with international human rights norms.

Nevertheless, according to Elizabeth Mayer, the Arabic version of this, conveys a totally different message because it provides for the exercise of the rights, not only of expression but also of belief and thought, within the *Shari'a*:

Everyone may think, believe and express his ideas without interference or opposition from anyone as long as he obeys the limits (*hudud*) set by the *Shari'a*. It is not permitted to spread falsehood (*al batil*) or disseminate that which involves encouraging abomination (*al fahisha*) or forsaking the Islamic community (*takhdhil li'l ummah*).<sup>135</sup>

Such criterion is whole inconsistent with international human rights law. For freedom of religion it stipulates, according to the English version, that 'everyone has the right to freedom of religion and worship in accordance with his religious beliefs.'<sup>136</sup> If the wording of this provision is subtly different from the comparable international human rights principle, it is quite acceptable. However, the difference between the that provision and the comparable international human rights norm appears more obvious in the Arabic version:

Everyone has freedom of belief and freedom of worship according to the principle "you have your religion, I have mine"<sup>137</sup>

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<sup>133</sup> Islamic calendar started from Hegira (the migration of the Prophet Mecca to Medina, which corresponds to 16 July 622). See 'Western chronology' *Encarta encyclopaedia* (2004).

<sup>134</sup> Art 12 (a) of UIDHR.

<sup>135</sup> A. E Mayer *Islam and Human Rights* (1999) 160-161. It can be understood that several means can be used by authorities to curtail these freedoms, because there is no established standard for the extension of *Shari'a*. For instance a system based on *Shari'a*, people can be limited in their attempt to convert Muslim people to other faith knowing that such act is an offence in the *Shari'a*. And it is forbidden to speak disparagingly about the prophet of Islam. The meaning of the phrase *takhdhil li'l umma* obscure. A related verb the same meaning occurs in Qur'an, *sura* 3: 160 'If Allah helps you, none can overcome you; and if he forsakes (*yakhdhu lukum*)...'

<sup>136</sup> Art 13 of UIDHR.

<sup>137</sup> Mayer (n 135 above) 161.

That formulation seems to be inspired by a *Quranic* chapter titled *Al kafirun* (the unbelievers)<sup>138</sup>, which states:

[U]nto you your religion and unto me my religion.<sup>139</sup>

According to Mayer the importance of the difference between the two versions is that the Arabic version does not allow a Muslim to convert to another religion while the opposite is possible, in fact encouraged. She supports this assumption by Section 7 of the Arabic version of the preamble of the UDHR, '[c]ommitment to a society where all people will believe that Allah alone is the master of all creation.' This version is tantamount to a commitment to converting everyone to Islam. Whereas, the English version is quite secular 'all worldly power shall be considered as sacred trust, to be exercised within the limits prescribed by the law and in a manner approved by it, and with due regard for the priorities fixed by it.'<sup>140</sup>

There is another Declaration in the human rights context by the Muslim *ummah*, which is worth examining.

### 3.4.2 The Cairo Declaration

The members of the Organisation of the Islamic Conference during the ninth Islamic conference of foreign Ministers in Cairo on 5 August 1990 signed the Cairo Declaration on Human Rights in Islam. It addresses freedom of religion in these terms:

Islam is the unspoiled nature. It is prohibited to exercise any form of compulsion on a man or to exploit his poverty or ignorance in order to convert him to another religion or to atheism.

The formulation of this provision seems to be more defensive of Islam than merely guaranteeing the freedom expected. It protects Muslims from being lured into other religions, as the Saudi delegate argued during the drafting of the CCPR.<sup>141</sup>

In addition to those instruments that are not legally binding, the Arab countries manifested their will of going beyond mere Declaration, in view of the growing concern about human rights violation in the Muslim world.

### 3.4.3 Arab Charter on Human Rights

The Arab Charter has had two versions. The Council of the League of Arab States, by Resolution 5437 on 15 September 1994 adopted the Arab Charter on Human Rights in Cairo. The 22 state members of the League, through this Charter wanted to identify themselves with human rights values as part of their culture and civilisation.<sup>142</sup>

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<sup>138</sup> *Sura* 109 of the *Qur'an*.

<sup>139</sup> As above v 6.

<sup>140</sup> Mayer (n 135 above) 162.

<sup>141</sup> n 83 above.

<sup>142</sup> First paragraph of the preamble of the Arab Charter.

The right to freedom of belief is among the rights guaranteed by the Arab Charter. It used the following formulation:

Everyone has a guaranteed right to freedom of belief, thought and opinion.<sup>143</sup>

Under this article, freedom of belief, thought and opinion are associated. For freedom of religion, it is addressed under a different article:

Adherents of every religion have the right to practice their religious observances and to manifest their views through expression, practice or teaching without prejudice to the rights of others. No restrictions shall be imposed on the exercise of freedom of belief, thought and opinion except as provided by law.<sup>144</sup>

A bit of confusion is created by the last sentence of this Article for the fact that it addresses freedom that is provided for under a different article and surprisingly ignores freedom of religion which it expressly provides for. It gives the impression that freedom of religion can be subjected to restriction.

This Charter, without being ratified by any Arab State<sup>145</sup> despite the recommendation of the Council of Arab League in its Resolution 6089 of March 2001<sup>146</sup>, has been revised under the pressure of several Arab NGOs<sup>147</sup>. The Arab Standing Committee for Human Rights adopted the text of the new draft on 5-14 January 2004.

It was on 24 March 2003 that the Council of the Arab League, in its Resolution 6032-129 encouraged the Permanent Arab Commission on Human Rights to modernise the Arab Charter on Human Rights. According to the Secretary General of the Arab League, Amr Mousa, the term 'modernisation' is to be understood as the process of bringing the Charter into Compliance with international human rights standards.<sup>148</sup>

For its entry into force, the Charter requires seven ratifications<sup>149</sup>. To dates, Jordan and Tunisia are the only states that have ratified it. However, seven additional States, including two African States, Algeria and Egypt, have signed it.<sup>150</sup>

As far as the right to freedom of belief is concerned, the new draft Charter is a substantial improvement of the original document. The revision created an opportunity to

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<sup>143</sup> Article 26 of the Arab Charter.

<sup>144</sup> Art 27 of the Arab Charter.

<sup>145</sup> Nowak (n 114 above) 255.

<sup>146</sup> E/CN4/2004/NGO/64 of 6 February 2004.

<sup>147</sup> M Rishmani 'The revised Arab Charter on Human Rights: A step forward?' (2005) 361-376 *Oxford Journals, Human Rights : Law Review* volume 5, Number 2 <[http:// www.oxfordjournals.org/cgi](http://www.oxfordjournals.org/cgi)> (accessed on 1 August 2006).

<sup>148</sup> As above.

<sup>149</sup> Art 49 (b) of the Arab Charter.

<sup>150</sup> Rishmani (n 147 above).

revitalise the Charter and bring it into line with the other international human rights instruments.<sup>151</sup>:

Everyone has the right to freedom of thought, conscience and religion. No restriction may be imposed on the exercise of such freedom except as provided by law.

The freedom to manifest one's religion or belief of to perform religious observances, either alone or in community with others, shall be subjected only to such limitations as are prescribed by law and are necessary in a tolerant society that respect human rights and freedom to protect public safety, public order, public health or morals or the fundamental rights and freedoms of others.<sup>152</sup>

Furthermore, the Arab Charter provides for the establishment of a Committee for the implementation of its provisions.<sup>153</sup> It also provides for a state reporting mechanism.<sup>154</sup> This is a significant first step in a positive direction.<sup>155</sup>

### 3.5 Conclusion

It is observed that, whenever, some Muslim states were involved in the drafting of a human rights instrument, the name of Islam has been used to thwart it, as far as the protection freedom of belief is concerned. It should be acknowledged that, in so doing, they are more concerned about protecting the Muslims from being attracted in other faiths than the coexistence of those faiths with Islam.

In the European context, on the contrary, Islam seems to suffer as the right to manifest one's the religion has been waived.<sup>156</sup> In France, the strict neutrality of public service, as suggests article 8 of the law of 13 July 1983,<sup>157</sup> is alleged.

In Germany, the bans on wearing the headscarf in part of the country have the same background. Notwithstanding, whatever may be the reason given of the two countries, for the bans, the will of resisting Islamic civilisation and culture seems to be more objective. Otherwise, as stated the minister from Hamburg during the meeting of ministers of education

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<sup>151</sup> NGO Human Rights First (24 March, 2004) <[http:// www.humanrightsfirst.org/media/2004](http://www.humanrightsfirst.org/media/2004)> (accessed 1 August 2006).

<sup>152</sup> Art 30 (a and b).

<sup>153</sup> Art 45 of the Arab Charter.

<sup>154</sup> Art 48 of the Arab Charter.

<sup>155</sup> The good intention expressed by the Arab States in this second form of the Charter is to be materialised by its ratification, otherwise, it would be seen as a mere reaction to the pressure of external sources.

<sup>156</sup> S Benhabib *Reclaiming Universalism: Negotiating Republican Self-Determination and Cosmopolitan Norms* (2004) 143.

<sup>157</sup> The opinion, political, unionist, religious or philosophical activities of a functionary shall not be mentioned in his or her documents, see Lebreton (n 76 above) 389.

of sixteen states on 9 October 2003 in Germany, '[t]he Muslim teachers have been wearing headscarf since 2000 without provoking problems.'<sup>158</sup>

Those abovementioned opposing attitudes with civilisational characteristics around Islam have some consequences on the African continent where both the western and Islamic civilisations are equally influent. The next chapter deals with those negative impacts on two African countries, Egypt and Nigeria.

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<sup>158</sup> Weysel Dezman, Humboldt University, Berlin believes that this struggle takes place against a backdrop of rising Muslim immigration to Germany, whose population is overwhelmingly Christian. He said that immigration to Germany in past decades has seen the arrival of more foreign citizens and more religious communities. At the end of 2001, there were 7.3 million foreigners living in Germany, a share of eight percent of the total population. The largest religious minority in the country is now made up of Muslims. According to Ministry of Interior estimates, about 3.2 million Muslims were living in Germany as of the end of 2000, some 450,000 of them with German citizenship. <<http://www.immigrationinformation.org/feature/display>> (accessed on 11 August 2006)

## **Chapter 4 The impact of conflicts of civilisation on Africa: The cases of Egypt and Nigeria**

### **4.1 Introduction**

The respect, protection and fulfilment of the fundamental human rights of the citizens are first and foremost a duty and an obligation weighing on the states. For, they are the only alternative for a lasting stability of any society.<sup>159</sup> The religion related violence is a threat to democracy and development in any country. It undermines the nation building process, for the fact that it dilutes in all the conflicts serving as catalyst to fuel the crisis. From Sudan to Cote d'Ivoire passing by Algeria, all the conflicts in those countries have some religious components. The two countries chosen (Egypt and Nigeria), represent two different kinds of religiously based obstacle, more horizontally than vertically, to the full realisation of freedom of belief. They have different forms (the former is a unitary state and the latter is a federal state), they experience different types of violence while speaking the same language in terms of cause of that violence.

### **4.2 Egypt**

The Constitution of Egypt provides for freedoms of belief in a brief manner:

The State shall guarantee freedom of belief and religious rites.<sup>160</sup>

However, Egypt is party to the International Covenant on Political and Social Rights,<sup>161</sup> and as such the provisions of that Covenant supplement its domestic legislation.

What is the reality on the ground? Samih Fawzy,<sup>162</sup> writing in the Coptic Newspaper "Watani"<sup>163</sup> (my country), expressed his anger about the current situation in Egypt in this term:

Why an Egyptian Christian is paying the price for the worldwide disruption of Christian-Muslim relation?  
What have they and their Muslim fellow citizens got to do with what happened in Iraq and Afghanistan? Why

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<sup>159</sup> As supported by the first preambular paragraph of the Universal Declaration.

<sup>160</sup> Article 46 of the Constitution.

<sup>161</sup> Egypt signed and ratified the CCPR respectively on 4 August 1967 and 14 January 1982. See <<http://www.ohchr.org>> (accessed 11 October 2006).

<sup>162</sup> Author of the "Out of the Sectarian Tunnel: Coptic Problem in Egypt.

<sup>163</sup> Referring to the incident that occurred on 21 October 2005 in Alexandria in which at least one person was killed and 45 wounded. The incident was prompted by a Newspaper report alleging that anti-Islam play was being screened in the Mar Girgis Church in Alexandria. Some 5,000 Muslims headed to the Church after the Friday prayer, to show their anger. It should also be recalled that similar incident took place in 2000 in which 20 people were killed during armed clashes between Christians and Muslims in the village of Yal-Kushed in Nile valley South of Cairo < <http://www.irinnew.org.asp> > (accessed on 30 September 2006).

must Christian-Muslim relations in our society carry the burden of a global cultural discourse that pushes people towards the clash of civilisations, religions and cultures?<sup>164</sup>

This reaction is sign of exasperation about the odd relation between the Egyptians of different religions. One wonders how did Egypt arrive at this point. The Egyptian government is under pressure reflecting the socio-religious tensions of its populations.

#### **4.2.1 A brief history of social and political crises in Egypt**

It was after the Egyptians had mounted militant resistance to the 1936 Anglo-Egyptian Treaty, and Palestinian Arabs had launched an armed uprising in Palestine against the British mandate and what they called Zionist colonisation in 1936-1937, that the Muslim Brotherhood, which was founded in 1928 by Hassan al Bana (1904-1949), a primary school teacher, formally transformed itself into a political entity in 1939. Then, it exposed the foundation its philosophy as: firstly, Islam is a comprehensive self-evolving system, it is the ultimate path of life in all its spheres; secondly, Islam emanates from, and is based on two fundamental sources, the *Qur'an* and the *Sunnah*; thirdly, Islam is applicable to all times and all places.<sup>165</sup>

The popular support of King Farouq, the then ruler of the country, suffered a set back after the defeat of the Egyptian troops which had joined the Arab war efforts against the newly created Jews state of Israel, after the withdrawal of the British troops from Palestine in May 1948.<sup>166</sup>

The Muslim Brotherhood's volunteers, who fought alongside the Egyptian troops in that war, have had contact with nationalist Egyptian military officers. As result some them became sympathisers of their cause.<sup>167</sup> The recruitment of those officers strengthened the Muslim Brotherhood. It then developed the slogan:

The Qur'an is our Constitution; Prophet is our Guide; Death for the glory of Allah is our greatest ambition.<sup>168</sup>  
The Brotherhood regained legitimacy after the overthrow of the king in 1952 by the military officers including four Brotherhood sympathisers like Muhammad Anwar Sadat. The Revolutionary Command Council (R.C.C.), which resumed power, offered three cabinet seats to the Brothers.<sup>169</sup> When Gamal Abdul Nasser, one of the Members of R.C.C., eased out Neguib, the then supreme leader of the country, he began a land reform programme,

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<sup>164</sup> Samih Fawzy, appeared in Watani on 30 April 2006 posted 15 September 2006 on <<http://arabangles.wordpress.com>> (accessed on 30 September 2006).

<sup>165</sup> Zakriyya Sulmani Bayyumi *The Muslim Brotherhood* (in Arabic) (1979) 90.

<sup>166</sup> Hiro (n12 above) 61-62.

<sup>167</sup> As above.

<sup>168</sup> Hiro (n 12 above) 62.

<sup>169</sup> Hedaybi, a member of the Brotherhood, declined the offer. See above 65.

which was opposed by the Brothers.<sup>170</sup> The Brothers considered the officers, as modernizers, more interested in secular education, equal rights for women and reforming land ownership patterns than applying the *Shari' a* to all spheres of life.<sup>171</sup> The gulf was created between the Brothers and the ruling elites. They revived their secret cells, which they called spiritual Order, to carry out assassination and other subversive activities. On 23 August 1954, one of the Bothers, Abdul Munim Abdul Raul attempted to kill Nasser. He failed as result he and five others Brothers were executed, and more than 4,000 others jailed.<sup>172</sup>

Once again many of the Brotherhood members were involved in three assassination attempts against him.<sup>173</sup> They were allegedly inspired by the then Saudi monarch who was battling with Nasser over the supremacy in North Yemen after the republican coup there, in September 1962.<sup>174</sup> As a result one thousand of the members of the organisation were arrested; 365 tried, the top leaders executed in August 1966. Among them was Sayyid Qutb (1906-1966),<sup>175</sup> whom, the Ministry of Education had sent to a university in Colorado in 1948 for further studies.<sup>176</sup> He was a prolific writer. He wrote a book, *Islam and the Problem of Civilisation*, in which he stated: "What should be our verdict on this synthetic (western) civilisation? What should be done to America and the west, given their overwhelming danger to humanity...? Should we not issue a death sentence? Is it not the verdict most appreciate to the nature of the crime?"<sup>177</sup>

During his trial, Qutb did not contest the official charge of sedition levied against him, instead he explained his position by saying that "the bonds of ideology and belief are sturdier than those of patriotism based upon region, and its false distinction among Muslims on regional basis, is but one expression of crusading and Zionist imperialism, which must be eradicated." He argued that the Brothers had declared someone to be *Jahil* (infidel), "they have the right to attack his person or property, a right guaranteed in Islam." He continued by

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<sup>170</sup> As above.

<sup>171</sup> As above.

<sup>172</sup> As above.

<sup>173</sup> Hiro (n12above) 66.

<sup>174</sup> As above.

<sup>175</sup> n 17 above.

<sup>176</sup> His three years stay in America convinced him that the American society was racist and sexually depraved. For him the West was in a civilisational decline similar to the fall of the Roman Empire. He became interested in his Islamic root and Islam as a whole. On his return in 1951, the Ministry of Education found his anti-American views too controversial, and ask him to resign.

<sup>177</sup> Exactly the same messages profess by Osama Bin Laden and his intellectual mentor, Ayman Zawahiri today, after decades. Hiro (n 12 above) 66-67.

saying that “If in the process of performing this religious duty of waging a *Jihad* against unbelievers, a Brother found himself on the path of sedition, so be it.”<sup>178</sup>

After the death of Nasser in 1970,<sup>179</sup> Sadat succeeded in co-opting several leaders of Brotherhood into political system. Those members who were not satisfied with the option taken by their leaders broke away to form clandestine more radical movements. Such groups were *Mukfirtiya* (Denouncers of the Infidel); *Jund Allah* (Soldiers of Allah); *Munnazamat al Jihad* (the Jihad Organisation) popularly known as *al Jihad* or the Islamic *Jihad*, and *Al Takfir Wa al Hijra* (Denunciation/ Repentance of Infidel and Migration). All of these were violently opposed to the regime.<sup>180</sup>

Islamism got another boost after the congress of Islamic associations under the auspices of the Al Azhar University rector, Shaikh Abdul Halim.<sup>181</sup> Sadat ordered that those clauses of Egyptians law, which were based on the Napoleonic code, be replaced with appropriate clauses from *Shari a*. The presidential decree specifying the death penalty for those who renounce Islam was to be submitted to parliament for approval.<sup>182</sup>

The gap widened between the Islamists and Sadat when he failed to implement the abovementioned presidential decree due to the disagreement of the Copts, who alleged that it was in violation of the freedom of religion<sup>183</sup>. His policies were regularly criticised in the Islamist Newspaper *Al Daawa* (The Call). The divorce became complete when Sadat resulted to clamping down on the Islamist opposition on September 1982, after the reportedly threat from the Israeli Prime Minister Menachen Begin, not to honour his commitment to withdraw from Sinai if open criticism of 1978 Treaty<sup>184</sup> is tolerated by Egypt. Several Islamist fundamentalists were arrested, the military purged of 200 officers suspected of being pro-Brotherhood.

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<sup>178</sup> As above.

<sup>179</sup> n12 above 69 & 70.

<sup>180</sup> The members of *Al Takfir wa al Hijra* played a leading role in ransacking and burning the nightclubs along Cairo “golden strip” during the three days of widespread rioting in mid-January 1977 caused by the withdrawal of government subsidies on daily necessity. It was led by Shukri Ahmad Mustafa, an agricultural engineer, who had been arrested in 1965 as a member of Muslim Brotherhood. See Hiro (n12 above) 72.

<sup>181</sup> n12 above 73.

<sup>182</sup> D. Hiro *Inside the Middle East* (1982) 112.

<sup>183</sup> As above.

<sup>184</sup> Camp David Accords for peace in Middle East signed between the President of USA, Jimmy Carter, The Israeli Prime minister, Menachen Begin, and the Egyptian President, Anwar al-Sadat on 17 September 1978 in Washington. See Camp ‘David Accords’ *Encarta Encyclopaedia Standard* (2004).

In the same, precisely on 6 October 1982, four soldiers led by a 24 year-old lieutenant, Khalid Ahmad Shawki Islambouli killed Sadat. Islambouli shouted after the act, "I have killed the pharaoh and I don't fear death."<sup>185</sup>

Shaikh Abdul Rahman<sup>186</sup> was among the 24 suspects of the assassination of Sadat; he was later released by Mubarak<sup>187</sup> for lack of evidence. However, he was refused reinstatement as professor at Asyut University, where he was teaching. He started attacking the regime. He toured the Country giving speeches to inspire the Islamic militancy. He argued that women should stay at home and serve men; the artistic expression should keep away from religion, the Christian minority in Egypt should be treated as second class citizens, and that the political and social innovation from the West are incompatible with Islamic values. He has been arrested, but to be released, once again for lack of evidence in 1984.<sup>188</sup>

In the late 1980s, after the Afghan war against the Soviet Union,<sup>189</sup> some 800 to 2,000 of Egyptians who had gone there to join the Mujahedin forces against the Russian backed regime (about 6,000 men), returned to Egypt, including Zawahiri, who had gone there after his release. As a result there was a spur in the terrorist activities, especially the *Gamaat*, which started targeting foreign tourist. From May to December 1992, 322 violent related deaths, including 13 copts in two villages, an academic and columnist, and outspoken critic of Islamic fundamentalist, Faraj Foda.<sup>190</sup>

At the same time the Islamist extremist began targeting Egyptians working for the regime abroad: In November 1995, *Al-Gamaat's* International affiliate, called *Al-Gamaat al Adila al Alamiya* (the International Justice Group, or IJG), assassinated Egyptian Trade representative in Geneva, accused of being an armed agent of Egyptian interior ministry. Six days later, the truck bombing of the Egyptian Embassy in Islamabad by the same IJG left 18

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<sup>185</sup> Hiro (n12 above) p 78.

<sup>186</sup> Despite his blindness since infancy, he succeeded in memorising the Qur'an in Braille, and later became lecturer at the university after his doctorate at the Al Hazhar University in 1955. See Hiro(n12 above )86 .

<sup>187</sup> Vice President Hosni Mubarak, who had been sworn in as president, promulgated emergency law. By late October he had imprisoned 3,000 Islamist extremists belong chiefly to Al Jihad, Al Gamaat Islmiya and Al Takfir wa al Hrjra. Hiro (n 12 above) 81.

<sup>188</sup> Ayman Zawahiri was released the same year after serving three years sentence for complicity in the assassination of Sadat. As above.

<sup>189</sup> In May 1988, Afghanistan, Pakistan, the USSR and the USA, signed the agreement providing for an end to foreign intervention in Afghanistan. The USSR began withdrawing its forces. The withdrawal was completed in February 1989. See Hiro (n 12 above above) 91.

<sup>190</sup> n 12 above 92.

deaths.<sup>191</sup>The IJG who claimed the responsibility, asked for the release of Shaik Abdul Rahman.<sup>192</sup>

*Al Jihad*, which was created in 1974 by Muhammad Abdul Salam Faraj<sup>193</sup>, Abbud Abdul Latif Zumir and Ayman Zawahiri, then student at Cairo University Medical School, was revived by Zawahiri after his return from Afghanistan.<sup>194</sup> In February 1998 *Al Jihad* allied with *Al Qaeda* (the based) of Osama bin Laden to form the World Islamic Front against crusaders and Jews.<sup>195</sup>

Even if the problem today is mainly on the horizontal (meaning occurring between the composing elements of the Egyptian society), the government whose prime role is to equally protect all the citizens are a share of responsibility.

#### 4.2. 2 The responsibility of the state

With regard to freedom of belief it is stipulated in the Egyptian Constitution as follows:

Islam is the Religion of the State. Arabic is its official language, and the Islamic Jurisprudence (*Shari' a*) is the principal source of legislation.<sup>196</sup>

Egyptian pupulation is estimated at eighty million people, of about ten percent are coptic Christians. Such a provision in the superior law of the land is a serious impediment to the rights of those ten percent, as such their fellow will be inclined to ignor their freedoms of belief (including religious belief) and expression. The immediate consequences are their relegation as second class citizens. Whereas, a cross reading of Articles 2(1)<sup>197</sup> and 27<sup>198</sup>, passing by Articles 18 and 19<sup>199</sup> of CCPR shows that the Egyptian government fails to protect the minority group of which it engaged by ratifying the said covenant.

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<sup>191</sup> The Egyptian government blame Ayman Zawahiri who was based in Sudan with Osama bin Laden. Hiro (n 12 above) 105.

<sup>192</sup> The blind man was arrested in the US, where he was since 1989, and where he was running a mosque in Brooklyn, as suspect in the bombing of World Trade Center in 1993, and later sentenced to life imprisonment. As above.

<sup>193</sup> Faraj who was the Islamic thinker he developed two new theories in Islam: Jihad as the sixth pillar (obligation) of a Muslim, and Jihad as a perpetual movement to transform the non-Muslims world into the Islamic *ummah*. These concepts made him the most radical fundamentalist thinker so far. See Hiro (n12 above) 79.

<sup>194</sup> As above.

<sup>195</sup> Hiro (n12 above) 106.

<sup>196</sup> Art 2 of the Egyptian Constitution as amended in 2005.

<sup>197</sup> Prohibition of discrimination.

<sup>198</sup> Rights of minorities.

<sup>199</sup> Freedoms of thought, conscience and religion, and freedom of opinion and expression respectively.

This is the opinion of Samih Fawzy<sup>200</sup> when he accused the Egyptian government of creating the problem by lack of adequate political representation of Egyptian Copts, and discriminatory law prohibiting them from building churches without presidential authorities. "The areas of discrimination create unhealthy atmosphere and encourages extremists to attack Copts."

However, Egypt is not the only African state affected by the worldwide disruption in the peaceful coexistence of religions, civilisations and cultures.

### 4.3 Nigeria

The federal Constitution of Nigeria covers the freedom of belief in almost the same formulation as the Universal Declaration:

Every person is entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.<sup>201</sup>

How is Nigeria implementing the spirit of this provision doubled with that of CCPR to which it is a party?

According to Ashivelle Global Report<sup>202</sup>, on 18 February 2006 violence broke out in northern Nigeria, leaving at least 15 Christians dead and 11 churches in flames.<sup>203</sup> The riots were led by Muslims who were furious about the cartoons, published in Danish and other European newspapers. In revenge, on 21 February 2006, riots broke out against the Muslim population in Christian city of Onitsha. The Christians burnt the corpses of their victims and defaced mosques. At least 150 people were killed in separate clashes.

It is to imagine what may have prompted such an upheaval in the relation between religious communities. There is a need to look at the evolution of the Nigerian crises.

#### 4.3.1 Background of sectarian violence in Nigeria

FreedomHouse Centre for Religious Freedom, made a report<sup>204</sup> in which it exposed the origin and the scope of Nigeria's religion related violence. According to the report, on 27 October 1999, the Governor of the northern state of Zamfara, Alhadji Ahmed Sani, after

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<sup>200</sup> Quoted in Middle East Bulletin, jointly published by 'The United States Committee for Free Lebanon', and 'The Middle East Forum'(vol. 2 No 1 of January 2000) < [http:// www.meil.org](http://www.meil.org) > (accessed on 11 October 2006).

<sup>201</sup> Art 38 (1) of the Constitution.

<sup>202</sup> <<http://www.newtactics.org>> (accessed on 5 July 2006)

<sup>203</sup> No 372 of 2-8 March 2006. As above.

<sup>204</sup> Report of 27 March 2002 <<http://www.freedomhouse.org/religion.htm>> (accessed on 5 July 2006).

receiving solidarity visits from Sudanese, Saudi, Syrian and Palestinian representatives, proclaimed that the state would, in future be governed by *Shairi'a*.<sup>205</sup>

After Zamfara, the Muslim leaders of the states of Kaduna, Sokoto, Kebbi, Katsina, Niger, Kano, Jigawa Yobe, Gombe, Borno, and Bauchi followed the same step. Now 12 out of the 36 states of Nigeria have either adopted or said that they will adopt *Shairi'a*.<sup>206</sup> Some of these states have substantial non-Muslim population. States like Kaduna have about evenly divided population between Muslims and Christians.<sup>207</sup>

### 4.3.2 Summary of religious violence in Nigeria

The adoption of *Shari'a* in Kaduna prompted conflicts between the Muslim Hausa-Fulani groups and the non-Muslim Bajjiu, Atyap, Kagoro, Jaba, Kaninko, Ikuli and Ninzam.<sup>208</sup>

From Kaduna the conflicts spread throughout the country, especially after the refugees fleeing from Kaduna reached their areas.<sup>209</sup> More than 50 people, nearly all Muslims, were killed in the city of Aba<sup>210</sup> in the southeast, similar death toll was reported from Owerri and Onitsha,<sup>211</sup> about 80 miles from Aba. Violence took place also in the cities of Uyo and Umuahia.<sup>212</sup> In Sokoto, a largely Muslim state in the extreme northwest, four churches were burned and several people killed.<sup>213</sup>

In Bamboa, Borno state, riots broke out on 27 March 2000, because of the opening of a church in a predominantly Muslim area, and several people got killed.<sup>214</sup>

Muslim extremists who took the street demanding for the adoption of *Shari'a* in Katsina state in August 2000 burned several churches. Some churches had to be relocated out the Katsina City. Christians were also attacked by people demanding for the implementation of *Shari'a* in the cities of Dutsinma, Malumfashi, Daura, Kankia, Funtua and Mani.<sup>215</sup>

Early in September 2000, there were clashes between Christians and Muslims in the towns of Kaltungo and Billiri, also in Gombe State when the State committee responsible for

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<sup>205</sup> 'Shari'a in Secular Nigeria' *Church and associated magazine*, a publication of Civil Liberty Organisation Jan.-March, 2000

<sup>206</sup> As above.

<sup>207</sup> As above.

<sup>208</sup> 'Shari'a, the Raging Battle for Nigeria's Soul' *Liberty* March 2000.

<sup>209</sup> 'Nigerian Neighbourhood Left to Corpses' *Associated Press* 28 February 2000.

<sup>210</sup> 'Scores killed in spreading Nigeria Violence' *Reuters* 29 February 2000.

<sup>211</sup> 'Scores of Nigerian Killed in Backlashes to Early Bloodshed' *Los Angeles Time* 29 February 2000).

<sup>212</sup> As above.

<sup>213</sup> 'Ethnic and Religious Clashes' *Legal Rights Monitor* October 2000. Also see (n2004) 31.

<sup>214</sup> As above.

<sup>215</sup> 'Christians Protest Growing Islamisation of Nigeria' *Compass Direct* September 2000

implementing *Shari'a* visited the town of Bambam, leaving 25 people dead and huge damage.<sup>216</sup>

Trouble continued in 2001. When Israeli Ambassador visited Borno in March, there were attacks on Christians, and two churches were burned.<sup>217</sup> On 30 June, ten people mostly Muslims, were killed in Yarkasuwa in Kaduna State, and two Islamic schools were destroyed.

On 30 June 2001, when the state government appointed a Muslim leader to the Christian-dominated community of Kurama, violence broke out killing ten people, mostly Muslims.<sup>218</sup>

On 27 August 2001 in Kaduna, following the election of a Christian student as student council of the State Polytechnic University in Zaria, mob violence killed five Christian students.<sup>219</sup>

Nigeria has a government, which, like any other government has the responsibility to guarantee the security of its population by upholding their right, among others, to freedom of belief.

#### **4.3.3 The Responsibility of the state**

Nigeria is a federal state, and as such, in the name of the principle of superposition<sup>220</sup> that governs the relationship between the federal state and the federated states, the federal Constitution takes ascendancy over those of the states. The government of Nigeria did not take the necessary step to annul all the laws contrary to the federal Constitution and the CCPR provisions to which it is a full fledged party.<sup>221</sup> The passive attitude of the government during the violence, and its failure to prosecute those responsible of the cycle of violence is of the nature of encouraging such violence.<sup>222</sup>

#### **Conclusion**

From the clinically planned, and ideological and political based violence in Egypt, to the spontaneous spiral of mob killing spree in Nigeria, the common denominators are the name of Islam and the killing of innocent people.

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<sup>216</sup> 'Twenty-five killed in Religious Violence in Nigeria' *Compass Direct* 20 November 2000.

<sup>217</sup> n 204 above 31.

<sup>218</sup> 'Ten killed in Kaduna State' *Compass Direct* August 2001.

<sup>219</sup> 'Five Christian students killed in Northern Nigeria' *Compass Direct* 1 September 2001.

<sup>220</sup> Bernard Chantebout *Droit Constitutionnel et Science Politique* (1991) 71.

<sup>221</sup> Accession on 29 July 1993, see (n 205 above).

<sup>222</sup> That was the position of Human Rights Watch in its report on Nigeria, 25 July 2006 in which Peter Takirambudde, Director of Africa Division by saying that 'the security forces were absent while hundreds of people were being massacred in Yelma. Instead of protecting those at risk and trying to arrest the perpetrators, police and soldiers shot people on sight in Kano <[http:// http://hrw.org](http://http://hrw.org)> (accessed on 25 July 2006).

In Egypt, the resistance to the liberal western culture is more explanatory of the events mentioned above than a religious command. The Christian Coptic minority, easily identifiable with the western spirit through religion, suffers from that politically oriented conflict.

In Nigeria, the attitudes of the Muslims, most especially the burning of churches, in North can be attributed to the high rate of ignorance of many Muslims about their religion. I should be acknowledged that many non-Arab African Muslims ignore the basic principles of their religion, as a result they are easily manipulated for other reason than Islam. Otherwise, how can they reconcile those acts with this passage of the Qur'an?

Those who have been driven from their homes unjustly because they said: 'Our Lord is Allah' - For had it not been that Allah is repelling some men by means of others, monasteries and churches, synagogues and mosques, wherein the name of Allah is often mentioned, would assuredly have been pulled down. Verily, Allah helps one who helps Him.<sup>223</sup>

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*Sura: 22 v 40.*

## **Chapter 5 Conclusion and Recommendation**

### **5.1 Findings**

The concern was whether Islam is a reason to deny freedom of belief as provided by the international human rights instruments. The main sources of Islamic norms have been examined, and subsequently it was observed that, if properly interpreted,<sup>224</sup> there is no real obstacle to the right to freedom of belief in all its form in Islam. On the contrary, their approach to the religious tolerance can fully accommodate international human rights philosophy concerning freedom of belief. It has been seen that Islam, not only allows the coexistence with other beliefs, it puts a duty on the Muslim leaders and communities to provide protection for the members of those beliefs.<sup>225</sup> It has further been observed that the name of Islam has been used on several occasions, at two levels, to turn down the protection of freedom of belief: on the one hand, the state authorities focus on the protection of Muslims against the western civilisation, which includes here freedom of belief to opposition international human rights instruments, on the other, the intolerance of the population, makes the peaceful coexistence of beliefs difficult.

On the other side, freedom to manifest one's belief has been restricted for certain categories of Muslims in some Western countries. Here, the difference is that the restriction is generally imposed by the state, not the citizens, if we exclude the events that took place in Canada.<sup>226</sup>

Unfortunately, in this 'artificial' tension around Islam, Africa is greatly affected. It has been observed that in Egypt the tension is an intellectual entertained profound crisis that exists for long. In Nigeria it is rather a spontaneous and relatively recent phenomenon.<sup>227</sup>

### **Recommendation**

Once it has been proved that Islam is not an insurmountable obstacle to the respect, protection and fulfilment of freedom of belief, necessary steps should be taken for its realisation in Islam influenced states. The step to be taken should have a two dimensional approach: first, to adopt secular legislation sustained by the promotion of tolerance based on the true teaching of the two main sources of the Islamic norms. Second, the population should engage in open interfaith dialogues so as to expose any misinterpretation of those sources. This is the case of Egypt, where substantive legislation needs to be adopted so as to guarantee the full enjoyment of the right to freedom of belief of its Coptic minority. In Nigeria, the emphasis should be put on interfaith dialogues after outlawing all federated state legislations that are contrary to the secular spirit of the federal Constitution.

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<sup>224</sup> As set up by M. Chiragh, see (n 40 above).

<sup>225</sup> n 28 above.

<sup>226</sup> n 128 & 129 above.

<sup>227</sup> n 205 above.

Words count: 17 985

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- 1 Seyla Benhabib (15-19 March 2004), *Reclaiming Universalism: Negotiating Republican Self-determination and Cosmopolitan Norms*. The Tanner Lectures on Human values Delivered at the University of California at Berkeley

#### **International and municipal human rights legal instruments**

- 1 Universal Declaration on Human Rights

- 2 International Covenant on Civil and Political and Rights
- 3 Convention on the Rights of the Child
- 4 African Charter on Human and Peoples' Rights
- 5 African Charter on the Rights and Welfare of the Child
- 6 The European convention for the protection of human rights and fundamental freedoms
- 7 American declaration of the rights and duties of Man
- 8 American Convention on Human Rights
- 9 Universal Islamic Declaration of Human Rights
- 10 The Cairo Declaration
- 11 Arab Charter on Human Rights
- 12 Constitution of Egypt
- 13 Constitution of Nigeria

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2 Franklin Delano Roosevelt, former President of the United States of America

3 George W. Bush, President of the United States of America

4 Osama Bin Laden, Leader of the terrorist Organisation al Qaeda

5 Saudi Representative at the UNGA 3th Committee

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## **Annex**

### **Appendix 1**

#### **Some legal instruments regulating the relationship between the Prophet Muhammad and Non-Muslims in Arabia**

##### **I Medina Charter**

This is a document from Muhammad the Prophet (may Allah bless him and grant him peace), governing relations between the Believers i.e. Muslims of Quraysh and Yathrib and those who followed them and worked hard with them. They form one nation -- Ummah.

1 The Quraysh Mohajireen will continue to pay blood money, according to their present custom.

2 In case of war with any body they will redeem their prisoners with kindness and justice common among Believers. (Not according to pre-Islamic nations where the rich and the poor were treated differently).

3 The Bani Awf will decide the blood money, within themselves, according to their existing custom.

4 In case of war with anybody all parties other than Muslims will redeem their prisoners with kindness and justice according to practice among Believers and not in accordance with pre-Islamic notions.

5 The Bani Saeeda, the Bani Harith, the Bani Jusham and the Bani Najjar will be governed on the lines of the above (principles)

6 The Bani Amr, Bani Awf, Bani Al-Nabeet, and Bani Al-Aws will be governed in the same manner.

7 Believers will not fail to redeem their prisoners they will pay blood money on their behalf. It will be a common responsibility of the Ummat and not of the family of the prisoners to pay blood money.

8 A Believer will not make the freedman of another Believer as his ally against the wishes of the other Believers.

9 The Believers, who fear Allah, will oppose the rebellious elements and those that encourage injustice or sin, or enmity or corruption among Believers.

10 If anyone is guilty of any such act all the Believers will oppose him even if he be the son of any one of them.

11 A Believer will not kill another Believer, for the sake of an un-Believer. (i.e. even though the un-Believer is his close relative).

12 No Believer will help an un-Believer against a Believer.

13 Protection (when given) in the Name of Allah will be common. The weakest among Believers may give protection (In the Name of Allah) and it will be binding on all Believers.

14 Believers are all friends to each other to the exclusion of all others.

- 15 Those Jews who follow the Believers will be helped and will be treated with equality. (Social, legal and economic equality is promised to all loyal citizens of the State).
- 16 No Jew will be wronged for being a Jew.
- 17 The enemies of the Jews who follow us will not be helped.
- 18 The peace of the Believers (of the State of Madinah) cannot be divided. (it is either peace or war for all. It cannot be that a part of the population is at war with the outsiders and a part is at peace).
- 19 No separate peace will be made by anyone in Madinah when Believers are fighting in the Path of Allah.
- 20 Conditions of peace and war and the accompanying ease or hardships must be fair and equitable to all citizens alike.
- 21 When going out on expeditions a rider must take his fellow member of the Army-share his ride.
- 22 The Believers must avenge the blood of one another when fighting in the Path of Allah (This clause was to remind those in front of whom there may be less severe fighting that the cause was common to all. This also meant that although each battle appeared a separate entity it was in fact a part of the War, which affected all Muslims equally).
- 23 The Believers (because they fear Allah) are better in showing steadfastness and as a result receive guidance from Allah in this respect. Others must also aspire to come up to the same standard of steadfastness.
- 24 No un-Believer will be permitted to take the property of the Quraysh (the enemy) under his protection. Enemy property must be surrendered to the State.
- 25 No un-Believer will intervene in favour of a Quraysh, (because the Quraysh having declared war are the enemy).
- 26 If any un-believer kills a Believer, without good cause, he shall be killed in return, unless the next of kin are satisfied (as it creates law and order problems and weakens the defence of the State). All Believers shall be against such a wrong-doer. No Believer will be allowed to shelter such a man.
- 27 When you differ on anything (regarding this Document) the matter shall be referred to Allah and Muhammad (may Allah bless him and grant him peace).
- 28 The Jews will contribute towards the war when fighting alongside the Believers.
- 29 The Jews of Bani Awf will be treated as one community with the Believers. The Jews have their religion. This will also apply to their freedmen. The exception will be those who act unjustly and sinfully. By so doing they wrong themselves and their families.
- 30 The same applies to Jews of Bani Al-Najjar, Bani Al Harith, Bani Saeeda, Bani Jusham, Bani Al Aws, Thaalba, and the Jaffna, (a clan of the Bani Thaalba) and the Bani Al Shutayba.
- 31 Loyalty gives protection against treachery. (loyal people are protected by their friends against treachery. As long as a person remains loyal to the State he is not likely to succumb to the ideas of being treacherous. He protects himself against weakness).

- 32 The freedmen of Thaalba will be afforded the same status as Thaalba themselves. This status is for fair dealings and full justice as a right and equal responsibility for military service.
- 33 Those in alliance with the Jews will be given the same treatment as the Jews.
- 34 No one (no tribe which is party to the Pact) shall go to war except with the permission of Muhammed (may Allah bless him and grant him peace). If any wrong has been done to any person or party it may be avenged.
- 35 Any one who kills another without warning (there being no just cause for it) amounts to his slaying himself and his household, unless the killing was done due to a wrong being done to him.
- 36 The Jews must bear their own expenses (in War) and the Muslims bear their expenses.
- 37 If anyone attacks anyone who is a party to this Pact the other must come to his help.
- 38 They (parties to this Pact) must seek mutual advice and consultation.
- 39 Loyalty gives protection against treachery. Those who avoid mutual consultation do so because of lack of sincerity and loyalty.
- 40 A man will not be made liable for misdeeds of his ally.
- 41 Anyone (any individual or party) who is wronged must be helped.
- 42 The Jews must pay (for war) with the Muslims. (this clause appears to be for occasions when Jews are not taking part in the war. Clause 37 deals with occasions when they are taking part in war).
- 43 Yathrib will be Sanctuary for the people of this Pact.
- 44 A stranger (individual) who has been given protection (by anyone party to this Pact) will be treated as his host (who has given him protection) while (he is) doing no harm and is not committing any crime. Those given protection but indulging in anti-state activities will be liable to punishment.
- 45 A woman will be given protection only with the consent of her family (Guardian). (a good precaution to avoid inter-tribal conflicts).
- 46 In case of any dispute or controversy, which may result in trouble the matter must be referred to Allah and Muhammed (may Allah bless him and grant him peace), The Prophet (may Allah bless him and grant him peace) of Allah will accept anything in this document, which is for (bringing about) piety and goodness.
- 47 Quraysh and their allies will not be given protection.
- 48 The parties to this Pact are bound to help each other in the event of an attack on Yathrib.
- 49 If they (the parties to the Pact other than the Muslims) are called upon to make and maintain peace (within the State) they must do so. If a similar demand (of making and maintaining peace) is made on the Muslims, it must be carried out, except when the Muslims

are already engaged in a war in the Path of Allah. (so that no secret ally of the enemy can aid the enemy by calling upon Muslims to end hostilities under this clause).

50 Everyone (individual) will have his share (of treatment) in accordance with what party he belongs to. Individuals must benefit or suffer for the good or bad deed of the group they belong to. Without such a rule party affiliations and discipline cannot be maintained.

51 The Jews of al-Aws, including their freedmen, have the same standing, as other parties to the Pact, as long as they are loyal to the Pact. Loyalty is a protection against treachery.

52 Anyone who acts loyally or otherwise does it for his own good (or loss).

53 Allah approves this Document.

54 This document will not (be employed to) protect one who is unjust or commits a crime (against other parties of the Pact).

55 Whether an individual goes out to fight (in accordance with the terms of this Pact) or remains in his home, he will be safe unless he has committed a crime or is a sinner. (i.e. No one will be punished in his individual capacity for not having gone out to fight in accordance with the terms of this Pact).

56 Allah is the Protector of the good people and those who fear Allah, and Muhammad (may Allah bless him and grant him peace) is the Messenger of Allah (He guarantees protection for those who are good and fear Allah).

## **II Pact with the Tribe of Juhaina In the Name of Allah the Compassionate, the Merciful**

- 1 The life and property of the Juhaina shall be safeguarded
- 2 Juhaina shall be helped against whoever commits an outrage against them or attack them
- 3 However, help from the Muslims shall not be necessary where disturbances or wars take place among them internally or where their religious affairs are concerned.
- 4 The good and God-fearing people living near this tribe shall be entitled to the same rights as are admissible to Juhaina.

## **III Pact of Bani Dhamra**

### **In the Name of Allah the Compassionate, the Merciful**

This writing is from Allah's prophet, Muhammad (sm), and concerned the tribe of Bani Dhamra

- 1 The tribe of Bani Dhamra shall have the lives and property safeguarded.
- 2 The people of Bani Dhamra shall be helped against whoever attacked them
- 3 It shall be binding on the people of Bani Dhamra always to help the Prophet (sm); whenever the prophet of Allah requests their help, they shall give it. However, assistance in religious war shall no be required.
- 4 As long as the people of Bani Dhamra adhere to this pact, they shall be assisted.

5 Allah and his prophet have a responsibility in this pact.

#### **IV Pact of Bani Ghifar**

**In the Name of Allah the most Compassionate, the Merciful**

1 Bani Ghifar shall be regarded as Muslims. They shall have the same rights as those enjoyed by the Muslims and shall be subject to the same injunctions applicable to the Muslims.

2 Prophet Muhammad (sm) has entered into a pact to safeguard their lives and property, and the responsibility of Allah and His Prophet is to protect all of them.

3 Bani Ghifar shall be helped against any enemy that invades them.

4 It shall be incumbent on the people of Bani Ghifar to give help when it is requested by the Prophet of Allah (sm). But in religious wars each party shall remain impartial.

5 Whoever contravenes it, this pact shall not stand as an excuse for him.

#### **V Pact with Bani Ghadaya and Bani Uraiz**

**In the Name of Allah, the Compassionate, the Merciful**

From Muhammad, Prophet of Allah, to the Jews of Bani Ghadaya:

1 Responsibility in respect of the Jews of Bani Ghadaya is assumed.

2 *Jizya* has been laid down for Bani Ghadaya.

3 The people of Bani Ghadaya shall not rise up against the Prophet in any way.

4 The people of Bani Ghadaya shall not be exiled from their homes.

5 Nothing shall render this pact void.

Affixed with the seal of Muhammad, the Messenger of Allah

#### **VI Pact of Akbar bin Abdul Qais**

**In the Name of Allah, the Compassionate, the Merciful**

From Muhammad, Prophet of Allah to Akbar bin Abdul Qais

1 Allah and his Prophet have no responsibility for the mischief, upheaval, and sins committed by people in the Time of ignorance. But in future, it shall be obligatory on these people to fulfil their promises.

2 Neither the supply of provisions and grain of the people of Bahrain shall be interfered with, nor shall they be harassed at the time of ripening of fruit.

3 They shall have the right to the use of the collected rainwater.

4 'Ula bin al-Hazarmi shall continue to supervise them on behalf of the Holy Prophet. It is obligatory on the people of Bahrain to cooperate with him.

5 It shall be incumbent on the Muslim army to share with them the goods captured in religious wars and to treat them fairly and justly. At the tie of religious wars moderation and a middle course of action should be pursued.

6 Neither of the two contracting parties shall be entitled to an alteration in this pact; the people shall neither alter nor depart from this pact.

7 Allah and his Prophet testify to this pact.

## **VII Treaty of Hudaibiyah**

In Thy Name, O Allah

This is then treaty in which Muhammad (sm), son of Abdullah, has made a compromise with Sohail ibn Amr

1 There shall be no war between the contracting parties for ten years.

2 During this period, every person belonging to the two parties shall be safe and secure, with none raising a sword against the other.

3 If any person from among the Qureish goes to Medina he shall be sent back, but if any Muslim goes to Mecca, he shall not be sent back.

4 The tribes of Arabia are free to enter into this treaty on the side of either of the two parties.

5 The Muslims shall return to Medina at the present time and come back year during the time of pilgrimage, but they shall not stay in Mecca for more than three days.

4 They shall not come back armed and shall bring with them swords only, but these shall be sheathed and scabbards kept in bags.

## **Appendix 2**

Draft Arab Charter on Human Rights

Text adopted by the Arab Standing Committee for Human Rights

5-14 January 2004

(Translation from the Office of the High Commissioner for Human Rights)

Proceeding from the faith of the Arab nation in the dignity of the human person whom God has exalted since the Creation and that the Arab nation is the cradle of religions and the homeland of civilizations with lofty human values that affirm the human right to a life of dignity based on freedom, justice and equality, in implementation of the eternal principles of fraternity, equality and tolerance among human beings imparted by the noble Islamic religion and by the other divine religions,

Being proud of the humanitarian values and principles that it has firmly established throughout its long history and that have played a key role in spreading centres of knowledge in the East and the West, making them destinations for the people of the earth and for those searching for knowledge and wisdom,

Believing in the unity of the Arab nation as it struggles for its freedom, defends the right of nations to self-determination and to the protection of their wealth and development, and

believing in the sovereignty of the law and its role in the protection of human rights in the most comprehensive sense of the term, and believing also that the individual's enjoyment of freedom, justice and equality of opportunity is a fundamental measure of any society, Rejecting all forms of racism and Zionism, which constitute a violation of human rights and a threat to international peace and security, recognizing the close link between human rights and international peace and security, reaffirming the principles of the Charter of the United Nations, the Universal Declaration of Human Rights and the provisions of the two International Covenants on civil and political rights and on economic, social and cultural rights, and having regard to the Cairo Declaration on Human Rights in Islam. Now therefore, the States parties to the Charter have agreed as follows:

#### Article 1

The present Charter seeks in the context of the national identity of the Arab States and their sense of belonging to a common civilization, to achieve the following objectives:

- (a) To place human rights at the centre of the key national concerns of the Arab States so as to make them lofty and fundamental ideals that shape the will of individuals in the Arab States and enable them to improve their lives in accordance with noble human values;
- (b) To inculcate in human beings in the Arab States a sense of pride in their identity and attachment to the land, history and common interests of their homeland and to imbue them with the culture of human brotherhood, tolerance and openness towards others, in accordance with universal principles and values and with those proclaimed in international human rights instruments;
- (c) To prepare the new generations in the Arab States for a free and responsible life in a civil society that is characterized by solidarity and founded on the interdependence between awareness of rights and commitment to duties and governed by the values of equality, tolerance and moderation;
- (d) To entrench the principle that all human rights are universal, indivisible, interdependent and interrelated.

#### Article 2

- (a) All peoples have the right of self-determination and to control over their natural wealth and resources, and the right to freely choose their political system and to freely pursue their economic, social and cultural development.
- (b) All peoples have the right to national sovereignty and territorial integrity.
- (c) All forms of racism, Zionism and foreign occupation and domination constitute an impediment to human dignity and a major barrier to the exercise of the fundamental rights of peoples; all such practices must be condemned and efforts must be deployed for their elimination.
- (d) All peoples have the right to resist foreign occupation.

#### Article 3

- (a) Each State party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability.
- (b) The States parties to the present Charter shall take the requisite measures to guarantee effective equality in the enjoyment of all the rights and freedoms enunciated in the present Charter so as to ensure protection against all forms of discrimination on any of the grounds mentioned in the preceding paragraph.
- (c) Men and women have equal human dignity and equal rights and obligations in the framework

of the positive discrimination established in favour of women by the Islamic Shar' ah and other divine laws and by applicable laws and international instruments. Accordingly, each State party pledges to take all the requisite measures to guarantee equal opportunities and effective equality between men and women in the enjoyment of all the rights set out in this Charter.

#### Article 4

(a) In exceptional situations of emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States parties to the present Charter may take measures derogating from their obligations under the present Charter, to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race,

colour, sex, language, religion or social origin.

(b) In exceptional situations of emergency, no derogation shall be made from the following articles: article 5, article 8, article 9, article 10, article 13, article 14 (h), article 15, article 18, article

19, article 31, article 20, article 22, article 27, article 28 and article 29. Likewise, the judicial guarantees required for the protection of the aforementioned rights may not be suspended.

(c) Any State party to the present Charter availing itself of the right of derogation shall immediately inform the other States parties, through the intermediary of the Secretary-General of

the League of Arab States, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

(a) Every human being has the inherent right to life.

(b) This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 6

Sentence of death may be imposed only for the most serious crimes in accordance with the laws in force at the time of commission of the crime and pursuant to a final judgement rendered by a competent court. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.

Article 7

(a) Sentence of death shall not be imposed on persons under 18 years of age, unless otherwise stipulated in the laws in force at the time of the commission of the crime.

(b) The death penalty shall not be inflicted on a pregnant woman prior to her delivery or on a nursing mother within two years from the date of her delivery; in all cases, the best interests of the infant shall be the primary consideration.

Article 8

(a) No one shall be subjected to physical or psychological torture or to cruel, inhuman, degrading or humiliating treatment.

(b) Each State party shall protect every individual subject to its jurisdiction from such practices and shall take effective measures to prevent them. The commission of or participation in such acts shall be regarded as crimes that are punishable by law and not subject to any statute of limitations. Each State party shall guarantee in its legal system redress for any victim of torture

and the right to rehabilitation and compensation.

Article 9 No one shall be subjected to medical or scientific experimentation or to the use of his organs without his free consent and full awareness of the consequences and provided that ethical, humanitarian and professional rules are followed and medical procedures are observed to ensure his personal safety pursuant to the relevant domestic laws in force in each State party. Trafficking in human organs is prohibited in all circumstances.

Article 10

(a) All forms of slavery and trafficking in human beings are prohibited and are punishable by law. No one shall be held in slavery and servitude under any circumstances.

(b) Forced labour, trafficking in human beings for the purposes of prostitution or sexual exploitation, the exploitation of the prostitution of others and all other forms of exploitation or the exploitation of children in armed conflict are prohibited.

Article 11

All persons are equal before the law and have the right to enjoy its protection without discrimination.

#### Article 12

All persons are equal before the courts and tribunals. The States parties shall guarantee the independence of the judiciary and protect magistrates against any interference, pressure or threats. They shall also guarantee every person subject to their jurisdiction the right to bring proceedings before all courts of law.

#### Article 13

(a) Everyone has the right to a fair trial that affords adequate guarantees before a competent, independent and impartial court that has been constituted by law to hear any criminal charge against him or to decide on his rights or his obligations. Each State party shall guarantee to those without the requisite resources legal aid to enable them to defend their rights.

(b) Trials shall be public, except in exceptional cases that may be warranted by the interests of justice in a society that respects human freedoms and rights.

#### Article 14

(a) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant.

(b) No one shall be deprived of his liberty except on such grounds and in such circumstances as are determined by law and in accordance with such procedure as is established thereby.

(c) Anyone who is arrested shall be informed, at the time of arrest, in a language that he understands, of the reasons for his arrest and shall be promptly informed of any charges against

him. He shall be entitled to contact his family members.

(d) Anyone who is deprived of his liberty by arrest or detention shall have the right to request a medical examination and must be informed of that right.

(e) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or

other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. His release may be subject to guarantees to appear for trial. It shall

not be the general rule that persons awaiting trial shall be detained in custody.

(f) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a competent court in order that it may decide without delay on the lawfulness

of his arrest or detention and order his release if the arrest or detention is not lawful.

(g) Anyone who has been the victim of arbitrary or unlawful arrest or detention shall have an enforceable right to compensation.

#### Article 15

No crime and no penalty can be established without a prior provision of the law. In all circumstances, the law most favourable to the defendant shall be applied.

#### Article 16

Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty by a final judgement rendered according to law. In the course of prosecution and trial, he shall enjoy the following minimum guarantees:

(a) To be informed promptly, in detail and in a language which he understands, of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with his family;

(c) To be tried in his presence before an ordinary court and to defend himself in person or through legal assistance of his own choosing and to communicate with his legal counsel freely and in confidence;

(d) To have the free legal assistance of a defence lawyer, if he cannot defend himself or if the interests of justice so require, and to have the right to the free assistance of an interpreter if he cannot understand or speak the language used in court;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

- (f) Not to be compelled to testify against himself or to confess guilt;
- (g) To have the right, if convicted of a crime, to file an appeal according to law before a higher tribunal;
- (h) To have the right to respect for his person and his privacy in all circumstances.

Article 17 Each State party shall ensure in particular to any child at risk or any delinquent charged with an offence the right to a special legal system for minors in all stages of investigation, trial and implementation of sentence, as well as to special treatment that takes account of his age, protects his dignity, facilitates his rehabilitation and reintegration and enables him to play a constructive role in society.

Article 18 No one who is shown to be unable to pay a debt arising from a contractual obligation shall be imprisoned.

Article 19 (a) No one may be tried twice for the same offence. Anyone against whom such proceedings are brought shall have the right to challenge their legality and to demand his release.

(b) Anyone whose innocence is established by a final judgement shall be entitled to compensation for the damage suffered.

Article 20

(a) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

(b) Accused persons shall be segregated from convicted persons and shall be subject to a treatment appropriate to their status as unconvicted persons.

(c) The penitentiary system shall comprise treatment of prisoners the aim of which shall be their reformation and social rehabilitation.

Article 21

(a) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour or his reputation.

(b) Everyone has the right to the protection of the law against such interference or attacks.

Article 22

Everyone shall have the right to recognition as a person before the law.

Article 23

Each State party to the present Charter undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 24

(a) Every citizen has the right to freely pursue a political activity.

(b) Every citizen has the right to take part in the conduct of public affairs, directly or through freely chosen representatives.

(c) Every citizen shall have the right to stand for election or to choose his representatives in free and impartial elections, on the basis of equality among all citizens and guaranteeing the free expression of his will.

(d) Every citizen has the right of equal access to public service in his country on the basis of equality of opportunity.

(e) Every citizen has the right to freely form and join associations with others.

(f) Every citizen has the right to freedom of association and peaceful assembly.

(g) No restrictions may be placed on the exercise of these rights other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public health or morals or the protection of the rights and freedoms of others.

Article 25

Persons belonging to minorities shall not be denied the right to enjoy their own culture, to use their own language and to practise their own religion. The exercise of these rights shall be governed by law.

Article 26

(a) Everyone lawfully within the territory of a State party shall, within that territory, have the right to freedom of movement and to freely choose his residence in any part of that territory in conformity with the laws in force.

(b) No State party may expel an alien lawfully in its territory, other than in pursuance of a decision reached in accordance with law and after that person has been allowed to seek a review by the competent authority, unless compelling reasons of national security preclude it. Collective expulsion of aliens is prohibited under all circumstances.

#### Article 27

(a) No one may be arbitrarily or unlawfully prevented from leaving any country, including his own, nor prohibited from residing, or compelled to reside, in any part of that country.

(b) No one may be exiled from his country or prevented from returning thereto.

#### Article 28

Everyone has the right to seek political asylum in another country in order to escape persecution. This right may not be invoked by persons facing prosecution for an offence against public order under ordinary law. Political refugees may not be extradited.

#### Article 29

(a) Everyone has the right to nationality. No one shall be arbitrarily or unlawfully deprived of his nationality.

(b) States parties shall take such measures as they deem appropriate, in accordance with their domestic laws on nationality, to allow a child to acquire the mother's nationality, having due regard, in all cases, to the best interests of the child.

(c) No one shall be denied the right to acquire another nationality in accordance with the domestic legislation in his country.

#### Article 30

(a) Everyone has the right to freedom of thought, conscience and religion. No restrictions may be imposed on the exercise of such freedoms except as provided for by law.

(b) The freedom to manifest one's religion or beliefs or to perform religious observances, either alone or in community with others, shall be subject only to such limitations as are prescribed by law and are necessary in a tolerant society that respects human rights and freedoms to protect public safety, public order, public health or morals or the fundamental rights and freedoms of others.

(c) Parents or guardians have the freedom to ensure the religious and moral education of their children.

#### Article 31

Everyone has a guaranteed right to own private property, and shall not under any circumstances be arbitrarily or unlawfully divested of all or any part of his property.

#### Article 32

(a) The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any media, regardless of frontiers.

(b) Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals.

#### Article 33

(a) The family is the natural and fundamental group unit of society; it is based on marriage between a man and a woman. Men and women of full age have the right to marry and to found a family according to the rules and conditions of marriage. No marriage can take place without the full and free consent of both parties. The laws in force regulate the rights and duties of the man and woman as to marriage, during marriage and at its dissolution.

(b) The State and society shall ensure the protection of the family, the strengthening of family ties, the protection of its members and the prohibition of all forms of violence or abuse in the relations among its members, particularly against women and children. They shall also ensure the necessary protection and care for mothers, children, older persons and persons

with special needs and shall provide adolescents and young persons the most ample opportunities for physical and mental development.

(c) The States parties shall take all necessary legislative, administrative and judicial measures to guarantee the protection, survival, development and well-being of the child in an atmosphere of freedom and dignity and shall ensure, in all cases, that the child's best interests are the basic criterion for all measures taken in his regard, whether the child is at risk of delinquency or is a juvenile offender.

(d) The States parties shall take all the necessary measures to guarantee, particularly to young persons, the right to pursue a sporting activity.

#### Article 34

(a) The right to work is a natural right of every citizen. The State shall endeavour to provide, to the extent possible, a job for the largest number of those willing to work, while ensuring production, on the freedom to choose one's work and equal opportunities, without discrimination of any kind as to race, colour, sex, religion, language, political opinion, union affiliation, national or social origin, disability or other status.

(b) Every worker has the right to the enjoyment of just and favourable conditions of work which ensure appropriate remuneration to meet his essential needs and those of his family, and regulate working hours, rest and holidays with pay, as well as the rules for the preservation of occupational health and safety and the protection of women, children and disabled persons in the place of work.

(c) The States parties recognize the right of the child to be protected from economic exploitation

and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. To this end, and having regard to the relevant provisions of other international instruments, States parties shall in particular:

1. Provide for a minimum age for admission to employment;
2. Provide for appropriate regulation of the hours and conditions of employment;
3. Provide for appropriate penalties or other sanctions to ensure the effective enforcement of these provisions.

(d) There shall be no discrimination between men and women in their enjoyment of the right to effectively benefit from training, employment and job protection and the right to receive equal remuneration for equal work.

(e) Each State party shall ensure to workers who migrate to its territory the requisite protection in accordance with the laws in force.

#### Article 35

(a) Every individual has the right to freely form trade unions or to join trade unions and to freely pursue trade union activity for the protection of his interests.

(b) No restrictions shall be placed on the exercise of these rights and freedoms except such as are prescribed by the laws in force and that are necessary for the maintenance of national security, public safety or order or for the protection of public health or morals or the rights and freedoms of others.

(c) States parties to the present Charter guarantee the right to strike within the limits laid down by

law in accordance with the international labour criteria.

#### Article 36

The States parties shall ensure the right of every citizen to social security, including social insurance.

#### Article 37

The right to development is a fundamental human right and all States are required to establish the development policies and the measures necessary to guarantee this right. They have a duty to implement the values of solidarity and cooperation among them and at the international level with a view to eradicating poverty and achieving economic, social, cultural and political development. Pursuant to this right, every citizen has the right to participate in the realization of development and to enjoy the benefits and fruits thereof.

#### Article 38

Every person has the right to an adequate standard of living for himself and his family, that ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment. The States parties shall take the necessary measures commensurate with their resources to guarantee these rights.

#### Article 39

(a) The States parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the right of the citizen to free basic health-care services and to have access to medical facilities without discrimination of any kind.

(b) The measures taken by States parties shall include the following:

1. Development of basic health-care services and the guaranteeing of free and easy access to the centres that provide these services, regardless of geographical location or economic status;
2. Efforts to control disease by means of prevention and cure in order to reduce the mortality rate;
3. Promotion of health awareness and health education;
4. Suppression of traditional practices, which are harmful to the health of the individual;
5. Provision of basic nutrition and safe drinking water for all;
6. Combating environmental pollution and providing proper sanitation systems;
7. Combating smoking and abuse of drugs and psychotropic substances.

#### Article 40

(a) The States parties undertake to ensure to persons with mental or physical disabilities a decent life that guarantees their dignity, and to enhance their self-reliance and facilitate their active participation in society.

(b) The States parties shall provide social services free of charge for all persons with disabilities, shall provide the material support needed by those persons, their families or the families caring for them, and shall also do whatever is needed to avoid placing those persons in institutions. They shall in all cases take account of the best interests of the disabled person.

(c) The States parties shall take all necessary measures to curtail the incidence of disabilities by all possible means, including preventive health programmes, awareness raising and education.

(d) The States parties shall provide full educational services suited to persons with disabilities, taking into account the importance of integrating these persons in the educational system and the importance of vocational training and apprenticeship and the creation of suitable job opportunities in the public or private sectors.

(e) The States parties shall provide all health services appropriate for persons with disabilities, including the rehabilitation of these persons with a view to integrating them into society.

(f) The States parties shall endeavour to enable persons with disabilities to make use of all public and private services.

#### Article 41

(a) The eradication of illiteracy is a binding obligation upon the State and every person has the right to education.

(b) The States parties shall guarantee every citizen free education at least throughout the primary and fundamental levels. All types and levels of primary education shall be compulsory and accessible to all without discrimination of any kind.

(c) The States parties shall take appropriate measures in all domains to ensure partnership between men and women with a view to achieving national development goals.

(d) The States parties shall guarantee to provide education directed to the full development of the human person and strengthening respect for human rights and fundamental freedoms.

(e) The States parties shall endeavour to incorporate the principles of human rights and fundamental freedoms into formal and informal education curricula and educational and training programmes.

(f) The States parties shall guarantee the establishment of the requisite mechanisms to provide ongoing education for every citizen and the creation of national plans for adult education.

#### Article 42

(a) Every person has the right to take part in cultural life and to enjoy the benefits of scientific progress and its application.

(b) The States parties undertake to respect the freedom of scientific research and creative activity, and to ensure the protection of moral and material interests resulting from scientific, literary and artistic production.

(c) The State parties shall work together and enhance cooperation among them at all levels, with the full participation of intellectuals and creative artists and their organizations, with a view to developing and implementing recreational, cultural, artistic and scientific programmes.

#### Article 43

Nothing in this Charter may be construed or interpreted as impairing the rights and freedoms protected by the domestic laws of the States parties or those set forth in the international and regional human rights instruments which the States parties have adopted or ratified, including the rights of women, the rights of the child and the rights of persons belonging to minorities.

#### Article 44

When their existing legislative or non-legislative measures do not effectively ensure the implementation of the rights enunciated in this Charter, the States parties undertake to take, in conformity with their constitutional procedures and with the provisions of the present Charter, whatever legislative or non-legislative measures that may be necessary for the implementation of these rights.

#### Article 45

(a) Pursuant to this Charter, an "Arab Human Rights Committee", hereinafter referred to as "The Committee", shall be established. This Committee shall consist of seven members who shall be elected by secret ballot by the States parties to this Charter.

(b) The Committee shall consist of nationals of the States parties to the present Charter, who must be highly experienced and competent in the Committee's field of work. The members of the Committee shall serve in their personal capacity and with full independence and impartiality.

(c) The Committee shall not include more than one member from a State party; such a member may only be re-elected once. Due regard shall be given to the rotation principle.

(d) The members of the Committee shall be elected for a four-year term, although the mandate of three of the members elected during the first election and selected by lot, shall be for two years.

(e) Six months prior to the date of the election, the Secretary-General of the League of Arab States shall invite the States parties to submit their nominations within the following three months. He shall transmit the list of candidates to the States parties two months prior to the date of the election. The candidates who obtain the largest number of votes cast shall be elected to membership of the Committee. If, because various candidates have an equal number of votes, the number of candidates with the largest number of votes exceeds the number required, a second ballot will be held between the persons with equal numbers of votes. If the votes are again equal, the member or members shall be selected by lottery. The first election for membership of the Committee shall be held at least six months after the Charter enters into force.

(f) The Secretary-General shall invite the States parties to a meeting at the headquarters of the League of Arab States in order to elect the members of the Committee. The presence of the majority of the States parties shall constitute a quorum. If there is no quorum, the Secretary-General shall call another meeting at which at least two-thirds of the States parties must be present. If there is still no quorum, the Secretary-General shall call a third meeting, which will be held regardless of the number of States parties present.

(g) The Secretary-General shall convene the first meeting of the Committee, during the course of which the Committee shall elect its Chairman, from among its members, for a two-year term renewable only once and for a similar period. The Committee shall establish its own rules of procedure and methods of work and shall determine how often it shall meet. The Committee shall hold its meetings at the headquarters of the League of Arab States. It may also meet in any other State party to the present Charter at that party's invitation.

#### Article 46

(a) If, in the unanimous view of other members, a member of the Committee has ceased to perform his functions for any reason other than temporary absence, the Chairman of the Committee shall so inform the Secretary-General of the League of Arab States who, in turn, shall declare vacant the seat occupied by the member concerned.

(b) In the event of the death or resignation of a Committee member, the Chairman shall immediately inform the Secretary-General, who shall then declare vacant the seat occupied by the member concerned as of the date of his death or that on which the resignation took effect.

(c) Whenever a member's seat is declared vacant pursuant to the provisions of paragraphs (a) and (b) above and the term of office of the member to be replaced does not expire within six months from the date on which the vacancy was declared, the Secretary-General of the League

of Arab States shall refer the matter to the States parties to the present Charter which may, within two months, submit nominations, pursuant to article 45, in order to fill the vacant seat.

(d) The Secretary-General of the League of Arab States shall draw up an alphabetical list of all the duly nominated candidates, which he shall transmit to the States parties to the present Charter. The elections to fill the vacant seat shall be held in accordance with the relevant provisions.

(e) Any member of the Committee elected to fill a seat declared vacant in accordance with the provisions of (a) and (b) above shall remain a member of the Committee until the expiry of the remainder of the term of the member whose seat was declared vacant pursuant to the provisions of the two aforementioned paragraphs.

(f) The Secretary-General of the League of Arab States shall make provision within the budget of the League of Arab States for all the necessary financial and human resources and facilities that the Committee needs to discharge its functions effectively. The members of the Committee shall be afforded the same treatment as experts recruited by the secretariat of the League of Arab States with respect to remuneration and reimbursement of expenses.

#### Article 47

The States parties undertake to ensure that members of the Committee shall enjoy the requisite immunities for their protection against any form of harassment, moral or material pressure or prosecution on account of the positions or statements they express in the performance of their duties as members of the Committee.

#### Article 48

(a) The States parties undertake to submit reports to the Secretary-General of the League of Arab States on the measures they have taken to give effect to the rights and freedoms recognized in this Charter and on the progress made towards the enjoyment thereof. The Secretary-General shall transmit these reports to the Committee for its consideration.

(b) Each State party shall submit an initial report to the Committee within one year from the date on which the Charter enters into force and a periodic report every three years thereafter. The Committee may request the States parties to supply it with additional information relating to the implementation of the Charter.

(c) The Committee shall consider the reports submitted by the States parties pursuant to paragraph (b) of this article in the presence and with the participation in the deliberations of the representative of the State party concerned.

(d) In discussing the report, formulating its comments and submitting its recommendations for the necessary action, the Committee shall act in accordance with the objectives of the Charter.

(e) The Committee shall submit an annual report containing its comments and recommendations

to the Council of the League, through the intermediary of the Secretary-General.

(f) The reports, final comments and recommendations of the Committee shall be public documents which the Committee shall disseminate widely.

#### Article 49

(a) The Secretary-General of the League of Arab States shall submit the present Charter, once it has been approved by the Council of the League, to the States parties for signature, ratification or accession.

(b) The present Charter shall enter into effect two months after the date on which the seventh instrument of ratification is deposited with the secretariat of the League of Arab States.

(c) After its entry into force, the present Charter shall become effective, for each State party, two months after it has deposited its instrument of ratification or accession with the secretariat.

(d) The Secretary-General shall notify the States parties of the deposit of each instrument of ratification or accession.

#### Article 50

Any State party may submit written proposals, through the Secretary-General, to amend the present Charter. After the States members have been notified of these proposals, the Secretary-General shall invite them to consider the proposed amendments before submitting them to the Council of the League for adoption.

#### Article 51

The amendments shall take effect, with regard to the States parties that have approved them, once they have been approved by two-thirds of the States parties.

#### Article 52

Any State party may propose additional optional protocols to the present Charter and they shall be adopted according to the same procedures followed for the adoption of amendments to the Charter.

#### Article 53

(a) Any State party when signing this Charter, depositing the instruments of ratification or acceding hereto, may make a reservation to any article of the Charter, provided that such reservation does not conflict with the aims and purposes of the Charter.

(b) Any State party that has made a reservation pursuant to paragraph (a) of this article may withdraw this reservation at any time by means of a notification addressed to the Secretary-General of the League of Arab States.

(c) The Secretary-General shall notify the States parties of reservations made and of requests for their withdrawal.

### **Appendix 3:**

#### **Universal Islamic Declaration on Human Rights**

Paris 21 Dhul Qaidah 1401 Salem Azzam, 19th September 1981 *Secretary General*

#### ***Preamble***

*WHEREAS* the age-old human aspiration for a just world order wherein people could live, develop and prosper in an environment free from fear, oppression, exploitation and deprivation, remains largely unfulfilled;

*WHEREAS* the Divine Mercy unto mankind reflected in its having been endowed with super-abundant economic sustenance is being wasted, or unfairly or unjustly withheld from the inhabitants of the earth;

*WHEREAS* Allah (God) has given mankind through His revelations in the Holy Qur'an and the Sunnah of His Blessed Prophet Muhammad an abiding legal and moral framework within which to establish and regulate human institutions and relationships;

*WHEREAS* the human rights decreed by the Divine Law aim at conferring dignity and honour on mankind and are designed to eliminate oppression and injustice;

*WHEREAS* by virtue of their Divine source and sanction these rights can neither be curtailed, abrogated or disregarded by authorities, assemblies or other institutions, nor can they be surrendered or alienated;

*Therefore we, as Muslims, who believe*

a) in God, the Beneficent and Merciful, the Creator, the Sustainer, the Sovereign, the sole Guide of mankind and the Source of all Law;

b) in the Vicegerency (Khilafah) of man who has been created to fulfill the Will of God on earth;

c) in the wisdom of Divine guidance brought by the Prophets, whose mission found its culmination in the final Divine message that was conveyed by the Prophet Muhammad (Peace be upon him) to all mankind;

d) that rationality by itself without the light of revelation from God can neither be a sure guide in the affairs of mankind nor provide spiritual nourishment to the human soul, and, knowing that the teachings of Islam represent the quintessence of Divine guidance in its final and perfect form, feel duty-bound to remind man of the high status and dignity bestowed on him by God;

e) in inviting all mankind to the message of Islam;

f) that by the terms of our primeval covenant with God our duties and obligations have priority over our rights, and that each one of us is under a bounden duty to spread the teachings of Islam by word, deed, and indeed in all gentle ways, and to make them effective not only in our individual lives but also in the society around us;

g) in our obligation to establish an Islamic order:

i) wherein all human beings shall be equal and none shall enjoy a privilege or suffer a disadvantage or discrimination by reason of race, colour, sex, origin or language;

ii) wherein all human beings are born free;

iii) wherein slavery and forced labour are abhorred;

iv) wherein conditions shall be established such that the institution of family shall be preserved, protected and honoured as the basis of all social life;

v) wherein the rulers and the ruled alike are subject to, and equal before, the Law;

vi) wherein obedience shall be rendered only to those commands that are in consonance with the Law;

vii) wherein all worldly power shall be considered as a sacred trust, to be exercised within the limits prescribed by the Law and in a manner approved by it, and with due regard for the priorities fixed by it;

viii) wherein all economic resources shall be treated as Divine blessings bestowed upon mankind, to be enjoyed by all in accordance with the rules and the values set out in the Qur'an and the Sunnah;

ix) wherein all public affairs shall be determined and conducted, and the authority to administer them shall be exercised after mutual consultation (*Shura*) between the believers qualified to contribute to a decision which would accord well with the Law and the public good;

x) wherein everyone shall undertake obligations proportionate to his capacity and shall be held responsible pro rata for his deeds;

xi) wherein everyone shall, in case of an infringement of his rights, be assured of appropriate remedial measures in accordance with the Law;

xii) wherein no one shall be deprived of the rights assured to him by the Law except by its authority and to the extent permitted by it;

xiii) wherein every individual shall have the right to bring legal action against anyone who commits a crime against society as a whole or against any of its members;

xiv) wherein every effort shall be made to

(a) secure unto mankind deliverance from every type of exploitation, injustice and oppression,

(b) ensure to everyone security, dignity and liberty in terms set out and by methods approved and within the limits set by the Law;

*Do hereby, as servants of Allah and as members of the Universal Brotherhood of Islam, at the beginning of the Fifteenth Century of the Islamic Era, affirm our commitment to uphold the following inviolable and inalienable human rights that we consider are enjoined by Islam.*

*I Right to Life*

- a) Human life is sacred and inviolable and every effort shall be made to protect it. In particular no one shall be exposed to injury or death, except under the authority of the Law.
- b) Just as in life, so also after death, the sanctity of a person's body shall be inviolable. It is the obligation of believers to see that a deceased person's body is handled with due solemnity.

*II Right to Freedom*

- a) Man is born free. No inroads shall be made on his right to liberty except under the authority and in due process of the Law.
- b) Every individual and every people has the inalienable right to freedom in all its forms — physical, cultural, economic and political — and shall be entitled to struggle by all available means against any infringement or abrogation of this right; and every oppressed individual or people has a legitimate claim to the support of other individuals and/or peoples in such a struggle.

*III Right to Equality and Prohibition Against Impermissible Discrimination*

- a) All persons are equal before the Law and are entitled to equal opportunities and protection of the Law.
- b) All persons shall be entitled to equal wage for equal work.
- c) No person shall be denied the opportunity to work or be discriminated against in any manner or exposed to greater physical risk by reason of religious belief, colour, race, origin, sex or language.

*IV Right to Justice*

- a) Every person has the right to be treated in accordance with the Law, and only in accordance with the Law.
- b) Every person has not only the right but also the obligation to protest against injustice; to recourse to remedies provided by the Law in respect of any unwarranted personal injury or loss; to self-defence against any charges that are preferred against him and to obtain fair adjudication before an independent judicial tribunal in any dispute with public authorities or any other person.
- c) It is the right and duty of every person to defend the rights of any other person and the community in general (*Hisbah*).
- d) No person shall be discriminated against while seeking to defend private and public rights.
- e) It is the right and duty of every Muslim to refuse to obey any command which is contrary to the Law, no matter by whom it may be issued.

*V Right to Fair Trial*

- a) No person shall be adjudged guilty of an offence and made liable to punishment except after proof of his guilt before an independent judicial tribunal.
- b) No person shall be adjudged guilty except after a fair trial and after reasonable opportunity for defence has been provided to him.
- c) Punishment shall be awarded in accordance with the Law, in proportion to the seriousness of the offence and with due consideration of the circumstances under which it was committed.
- d) No act shall be considered a crime unless it is stipulated as such in the clear wording of the Law.
- e) Every individual is responsible for his actions. Responsibility for a crime cannot be vicariously extended to other members of his family or group, who are not otherwise directly or indirectly involved in the commission of the crime in question.

*VI Right to Protection Against Abuse of Power*

Every person has the right to protection against harassment by official agencies. He is not liable to account for himself except for making a defence to the charges made against him or where he is found in a situation wherein a question regarding suspicion of his involvement in a crime could be *reasonably* raised

*VII Right to Protection Against Torture*

No person shall be subjected to torture in mind or body, or degraded, or threatened with injury either to himself or to anyone related to or held dear by him, or forcibly made to confess to the commission of a crime, or forced to consent to an act which is injurious to his interests.

*VIII Right to Protection of Honour and Reputation*

Every person has the right to protect his honour and reputation against calumnies, groundless charges or deliberate attempts at defamation and blackmail.

*IX Right to Asylum*

a) Every persecuted or oppressed person has the right to seek refuge and asylum. This right is guaranteed to every human being irrespective of race, religion, colour and sex.

b) Al Masjid Al Haram (the sacred house of Allah) in Mecca is a sanctuary for all Muslims.

*X Rights of Minorities*

a) The Qur'anic principle "There is no compulsion in religion" shall govern the religious rights of non-Muslim minorities.

b) In a Muslim country religious minorities shall have the choice to be governed in respect of their civil and personal matters by Islamic Law, or by their own laws.

*XI Right and Obligation to Participate in the Conduct and Management of Public Affairs*

a) Subject to the Law, every individual in the community (*Ummah*) is entitled to assume public office.

b) Process of free consultation (*Shura*) is the basis of the administrative relationship between the government and the people. People also have the right to choose and remove their rulers in accordance with this principle.

*XII Right to Freedom of Belief, Thought and Speech*

a) Every person has the right to express his thoughts and beliefs so long as he remains within the limits prescribed by the Law. No one, however, is entitled to disseminate falsehood or to circulate reports which may outrage public decency, or to indulge in slander, innuendo or to cast defamatory aspersions on other persons.

b) Pursuit of knowledge and search after truth is not only a right but a duty of every Muslim.

c) It is the right and duty of every Muslim to protest and strive (within the limits set out by the Law) against oppression even if it involves challenging the highest authority in the state.

d) There shall be no bar on the dissemination of information provided it does not endanger the security of the society or the state and is confined within the limits imposed by the Law.

e) No one shall hold in contempt or ridicule the religious beliefs of others or incite public hostility against them; respect for the religious feelings of others is obligatory on all Muslims.

*XIII Right to Freedom of Religion*

Every person has the right to freedom of conscience and worship in accordance with his religious beliefs.

*XIV Right to Free Association*

a) Every person is entitled to participate individually and collectively in the religious, social, cultural and political life of his community and to establish institutions and agencies meant to enjoin what is right (*ma'roof*) and to prevent what is wrong (*munkar*).

b) Every person is entitled to strive for the establishment of institutions whereunder an enjoyment of these rights would be made possible. Collectively, the community is obliged to establish conditions so as to allow its members full development of their personalities.

*XV The Economic Order and the Rights Evolving Therefrom*

- a) In their economic pursuits, all persons are entitled to the full benefits of nature and all its resources. These are blessings bestowed by God for the benefit of mankind as a whole.
- b) All human beings are entitled to earn their living according to the Law.
- c) Every person is entitled to own property individually or in association with others. State ownership of certain economic resources in the public interest is legitimate.
- d) The poor have the right to a prescribed share in the wealth of the rich, as fixed by Zakah, levied and collected in accordance with the Law.
- e) All means of production shall be utilised in the interest of the community (*Ummah*) as a whole, and may not be neglected or misused.
- f) In order to promote the development of a balanced economy and to protect society from exploitation, Islamic Law forbids monopolies, unreasonable restrictive trade practices, usury, the use of coercion in the making of contracts and the publication of misleading advertisements.
- g) All economic activities are permitted provided they are not detrimental to the interests of the community (*Ummah*) and do not violate Islamic laws and values.

#### *XVI Right to Protection of Property*

No property may be expropriated except in the public interest and on payment of fair and adequate compensation.

#### *XVII Status and Dignity of Workers*

Islam honours work and the worker and enjoins Muslims not only to treat the worker justly but also generously. He is not only to be paid his earned wages promptly, but is also entitled to adequate rest and leisure.

#### *XVIII Right to Social Security*

Every person has the right to food, shelter, clothing, education and medical care consistent with the resources of the community. This obligation of the community extends in particular to all individuals who cannot take care of themselves due to some temporary or permanent disability.

#### *XIX Right to Found a Family and Related Matters*

- a) Every person is entitled to marry, to found a family and to bring up children in conformity with his religion, traditions and culture. Every spouse is entitled to such rights and privileges and carries such obligations as are stipulated by the Law.
- b) Each of the partners in a marriage is entitled to respect and consideration from the other.
- c) Every husband is obligated to maintain his wife and children according to his means.
- d) Every child has the right to be maintained and properly brought up by its parents, it being forbidden that children are made to work at an early age or that any burden is put on them which would arrest or harm their natural development.
- e) If parents are for some reason unable to discharge their obligations towards a child it becomes the responsibility of the community to fulfill these obligations at public expense.
- f) Every person is entitled to material support, as well as care and protection, from his family during his childhood, old age or incapacity. Parents are entitled to material support as well as care and protection from their children.
- g) Motherhood is entitled to special respect, care and assistance on the part of the family and the public organs of the community (*Ummah*).
- h) Within the family, men and women are to share in their obligations and responsibilities according to their sex, their natural endowments, talents and inclinations, bearing in mind their common responsibilities toward their progeny and their relatives.
- i) No person may be married against his or her will, or lose or suffer diminution of legal personality on account of marriage.

#### *XX Rights of Married Women*

Every married woman is entitled to:

- a) live in the house in which her husband lives;

- b) receive the means necessary for maintaining a standard of living which is not inferior to that of her spouse, and, in the event of divorce, receive during the statutory period of waiting (*iddah*) means of maintenance commensurate with her husband's resources, for herself as well as for the children she nurses or keeps, irrespective of her own financial status, earnings, or property that she may hold in her own rights;
- c) seek and obtain dissolution of marriage (*Khul'a*) in accordance with the terms of the Law. This right is in addition to her right to seek divorce through the courts.
- d) inherit from her husband, her parents, her children and other relatives according to the Law;
- e) strict confidentiality from her spouse, or ex-spouse if divorced, with regard to any information that he may have obtained about her, the disclosure of which could prove detrimental to her interests. A similar responsibility rests upon her in respect of her spouse or ex-spouse.

#### *XXI Right to Education*

- a) Every person is entitled to receive education in accordance with his natural capabilities.
- b) Every person is entitled to a free choice of profession and career and to the opportunity for the full development of his natural endowments.

#### *XXII Right of Privacy*

Every person is entitled to the protection of his privacy.

#### *XXIII Right to Freedom of Movement and Residence*

- a) In view of the fact that the World of Islam is veritably *Ummah Islamia*, every Muslim shall have the right to freely move in and out of any Muslim country.
- b) No one shall be forced to leave the country of his residence, or be arbitrarily deported therefrom without recourse to due process of Law.

#### *Explanatory Notes*

1 In the above formulation of Human Rights, unless the context provides otherwise:

- a) the term 'person' refers to both the male and female sexes.
- b) the term 'Law' denotes the *Shari'ah*, i.e. the totality of ordinances derived from the Qur'an and the Sunnah and any other laws that are deduced from these two sources by methods considered valid in Islamic jurisprudence.

2 Each one of the Human Rights enunciated in this declaration carries a corresponding duty.

3 In the exercise and enjoyment of the rights referred to above every person shall be subject only to such limitations as are enjoined by the Law for the purpose of securing the due recognition of, and respect for, the rights and the freedom of others and of meeting the just requirements of morality, public order and the general welfare of the Community (*Ummah*).

The Arabic text of this *Declaration* is the original.

#### **Appendix 4**

**The Nineteenth Islamic Conference of Foreign Ministers (Session of Peace, Interdependence and Development), held in Cairo, Arab Republic of Egypt, from 9-14 Muharram 1411H (31 July to 5 August 1990),**

Keenly aware of the place of mankind in Islam as vicegerent of Allah on Earth;

Recognizing the importance of issuing a Document on Human Rights in Islam that will serve as a guide for Member states in all aspects of life;

Having examined the stages through which the preparation of this draft Document has so far, passed and the relevant report of the Secretary General;

Having examined the Report of the Meeting of the Committee of Legal Experts held in Tehran from 26 to 28 December, 1989;

Agrees to issue the Cairo Declaration on Human Rights in Islam that will serve as a general guidance for Member States in the Field of human rights.

Reaffirming the civilizing and historical role of the Islamic Ummah which Allah made as the best community and which gave humanity a universal and well-balanced civilization, in which harmony is established between hereunder and the hereafter, knowledge is combined with faith, and to fulfill the expectations from this community to guide all humanity which is confused because of different and conflicting beliefs and ideologies and to provide solutions for all chronic problems of this materialistic civilization.

In contribution to the efforts of mankind to assert human rights, to protect man from exploitation and persecution, and to affirm his freedom and right to a dignified life in accordance with the Islamic Shari'ah.

Convinced that mankind which has reached an advanced stage in materialistic science is still, and shall remain, in dire need of faith to support its civilization as well as a self motivating force to guard its rights;

Believing that fundamental rights and freedoms according to Islam are an integral part of the Islamic religion and that no one shall have the right as a matter of principle to abolish them either in whole or in part or to violate or ignore them in as much as they are binding divine commands, which are contained in the Revealed Books of Allah and which were sent through the last of His Prophets to complete the preceding divine messages and that safeguarding those fundamental rights and freedoms is an act of worship whereas the neglect or violation thereof is an abominable sin, and that the safeguarding of those fundamental rights and freedom is an individual responsibility of every person and a collective responsibility of the entire Ummah;

Do hereby and on the basis of the above-mentioned principles declare as follows:

ARTICLE 1:

(a) All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity.

(b) All human beings are Allah's subjects, and the most loved by Him are those who are most beneficial to His subjects, and no one has superiority over another except on the basis of piety and good deeds.

ARTICLE 2:

(a) Life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and states to safeguard this right against any violation, and it is prohibited to take away life except for a shari'ah prescribed reason.

(b) It is forbidden to resort to any means which could result in the genocidal annihilation of mankind.

(c) The preservation of human life throughout the term of time willed by Allah is a duty prescribed by Shari'ah.

(d) Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a Shari'ah-prescribed reason.

ARTICLE 3:

(a) In the event of the use of force and in case of armed conflict, it is not permissible to kill non-belligerents such as old men, women and children. The wounded and the sick shall have the right to medical treatment; and prisoners of war shall have the right to be fed, sheltered and clothed. It is prohibited to mutilate or dismember dead bodies. It is required to exchange prisoners of war and to arrange visits or reunions of families separated by circumstances of war.

(b) It is prohibited to cut down trees, to destroy crops or livestock, to destroy the enemy's civilian buildings and installations by shelling, blasting or any other means.

ARTICLE 4:

Every human being is entitled to human sanctity and the protection of one's good name and honour during one's life and after one's death. The state and the society shall protect one's body and burial place from desecration.

ARTICLE 5:

(a) The family is the foundation of society, and marriage is the basis of making a family. Men and women have the right to marriage, and no restrictions stemming from race, colour or nationality shall prevent them from exercising this right.

(b) The society and the State shall remove all obstacles to marriage and facilitate it, and shall protect the family and safeguard its welfare.

ARTICLE 6:

(a) Woman is equal to man in human dignity, and has her own rights to enjoy as well as duties to perform, and has her own civil entity and financial independence, and the right to retain her name and lineage.

(b) The husband is responsible for the maintenance and welfare of the family.

ARTICLE 7:

(a) As of the moment of birth, every child has rights due from the parents, the society and the state to be accorded proper nursing, education and material, hygienic and moral care. Both the fetus and the mother must be safeguarded and accorded special care.

(b) Parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take into consideration the interest and future of the children in accordance with ethical values and the principles of the Shari'ah.

(c) Both parents are entitled to certain rights from their children, and relatives are entitled to rights from their kin, in accordance with the tenets of the shari'ah.

ARTICLE 8:

Every human being has the right to enjoy a legitimate eligibility with all its prerogatives and obligations in case such eligibility is lost or impaired, the person shall have the right to be represented by his/her guardian.

ARTICLE 9:

(a) The seeking of knowledge is an obligation and provision of education is the duty of the society and the State. The State shall ensure the availability of ways and means to acquire education and shall guarantee its diversity in the interest of the society so as to enable man to be acquainted with the religion of Islam and uncover the secrets of the Universe for the benefit of mankind.

(b) Every human being has a right to receive both religious and worldly education from the various institutions of teaching, education and guidance, including the family, the school, the university, the media, etc., and in such an integrated and balanced manner that would develop human personality, strengthen man's faith in Allah and promote man's respect to and defence of both rights and obligations.

ARTICLE 10:

Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to change his religion to another religion or to atheism.

ARTICLE 11:

(a) Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to Allah the Almighty.

(b) Colonialism of all types being one of the most evil forms of enslavement is totally prohibited. Peoples suffering from colonialism have the full right to freedom and self-determination. It is the duty of all States peoples to support the struggle of colonized peoples for the liquidation of all forms of and occupation, and all States and peoples have the right to preserve their independent identity and economic control over their wealth and natural resources.

ARTICLE 12:

Every man shall have the right, within the framework of the Shari'ah, to free movement and to select his place of residence whether within or outside his country and if persecuted, is entitled to seek asylum in another country. The country of refuge shall be obliged to provide protection to the asylum-seeker until his safety has been attained, unless asylum is motivated by committing an act regarded by the Shari'ah as a crime.

ARTICLE 13:

Work is a right guaranteed by the State and the Society for each person with capability to work. Everyone shall be free to choose the work that suits him best and which serves his interests as well as those of the society. The employee shall have the right to enjoy safety and security as well as all other social guarantees. He may not be assigned work beyond his capacity nor shall he be subjected to compulsion or exploited or harmed in any way. He shall be entitled - without any discrimination between males and females - to fair wages for his work without delay, as well as to the holidays allowances and promotions which he deserves. On his part, he shall be required to be dedicated and meticulous in his work. Should workers and employers disagree on any matter, the State shall intervene to settle the dispute and have the grievances redressed, the rights confirmed and justice enforced without bias.

ARTICLE 14:

Everyone shall have the right to earn a legitimate living without monopolization, deceit or causing harm to oneself or to others. Usury (riba) is explicitly prohibited.

ARTICLE 15:

(a) Everyone shall have the right to own property acquired in a legitimate way, and shall be entitled to the rights of ownership without prejudice to oneself, others or the society in general. Expropriation is not permissible except for requirements of public interest and upon payment of prompt and fair compensation.

(b) Confiscation and seizure of property is prohibited except for a necessity dictated by law.

ARTICLE 16:

Everyone shall have the right to enjoy the fruits of his scientific, literary, artistic or technical labour of which he is the author; and he shall have the right to the protection of his moral and material interests stemming therefrom, provided it is not contrary to the principles of the Shari'ah.

ARTICLE 17:

(a) Everyone shall have the right to live in a clean environment, away from vice and moral corruption, that would favour a healthy ethical development of his person and it is incumbent upon the State and society in general to afford that right.

(b) Everyone shall have the right to medical and social care, and to all public amenities provided by society and the State within the limits of their available resources.

(c) The States shall ensure the right of the individual to a decent living that may enable him to meet his requirements and those of his dependents, including food, clothing, housing, education, medical care and all other basic needs.

ARTICLE 18:

(a) Everyone shall have the right to live in security for himself, his religion, his dependents, his honour and his property.

(b) Everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and his relationships. It is not permitted to spy on him, to place him under surveillance or to besmirch his good name. The State shall protect him from arbitrary interference.

(c) A private residence is inviolable in all cases. It will not be entered without permission from its inhabitants or in any unlawful manner, nor shall it be demolished or confiscated and its dwellers evicted.

ARTICLE 19:

(a) All individuals are equal before the law, without distinction between the ruler and the ruled.

(b) The right to resort to justice is guaranteed to everyone.

(c) Liability is in essence personal.

(d) There shall be no crime or punishment except as provided for in the Shari'ah.

(e) A defendant is innocent until his guilt is proven in a fast trial in which he shall be given all the guarantees of defence.

ARTICLE 20:

It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, to exile or to punish him. It is not permitted to subject him to physical or psychological torture or to any form of maltreatment, cruelty or indignity. Nor is it permitted to subject an individual to medical or scientific experiments without his consent or at the risk of his health or of his life. Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions.

ARTICLE 21:

Taking hostages under any form or for any purpose is expressly forbidden.

ARTICLE 22:

(a) Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah.

1. Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shari'ah.

(c) Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical Values or disintegrate, corrupt or harm society or weaken its faith.

(d) It is not permitted to excite nationalistic or doctrinal hatred or to do anything that may be an incitement to any form or racial discrimination.

ARTICLE 23:

(a) Authority is a trust; and abuse or malicious exploitation thereof is explicitly prohibited, in order to guarantee fundamental human rights.

(b) Everyone shall have the right to participate, directly or indirectly in the administration of his country's public affairs. He shall also have the right to assume public office in accordance with the provisions of Shari'ah.

ARTICLE 24:

All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah.

ARTICLE 25:

The Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration.